

ESTTA Tracking number: **ESTTA250479**

Filing date: **11/21/2008**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92047162
Party	Defendant Supreme Oil Company
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Attachments	Motion to Compel as Filed w Exhibits.pdf ( 127 pages )(5516675 bytes )



## **I. BACKGROUND**

On March 2, 2007 the Board instituted this cancellation proceeding, setting discovery to open on March 22, 2007 and close on September 18, 2007. On September 10, 2007, counsel for Petitioner wrote to Registrant's counsel to request the close of discovery be extended by sixty (60) days. Registrant agreed. (See Exhibit 1 to Registrant's Opposition to Petitioner's Motion for Summary Judgment, "Registrant's Opposition"). On September 18, 2007, Petitioner's counsel wrote to counsel for Registrant, mentioning that discovery could be conducted by an "informal exchange of information." (See Exhibit 4 to Registrant's Opposition). As noted in Lynn Perry's Declaration in Petitioner's Motion for Summary Judgment, Respondent's counsel agreed to the proposed informal discovery. (Perry Decl. ¶ 8).

On November 1, 2007, counsel for Petitioner again wrote to Registrant to request yet another sixty (60) day extension of the discovery period, and to discuss settlement. Registrant again consented. (See Exhibit 5 to Registrant's Opposition). On December 28, 2007, the parties agreed to extend the discovery period again by another sixty (60) days, setting the close of discovery on March 17, 2008. (See Exhibit 7 to Registrant's Opposition). During these discovery extensions, settlement discussions were ongoing as well. (See Exhibit 8 to Registrant's Opposition).

Petitioner and Registrant subsequently were at odds with respect to a filed Motion to Suspend, and as to the discovery cut off date. In light of this dispute, and with the discovery period apparently set to close on April 15, 2008, it became unclear to Registrant whether Petitioner would consent to a further extension or suspension and so to preserve the record Registrant served Registrant's Discovery Requests on Petitioner. (Attached as Exhibit A).

On May 16, 2008, Petitioner submitted its discovery responses, failing to answer any of Registrant's interrogatories, generally objecting to all as spuriously based upon an unreasonably high count of Registrant's interrogatories, and producing a total of only two (2) documents totaling seven (7) pages in response to Registrant's 64 document requests. (Attached as Exhibit B).

Meanwhile, on June 13, 2008, contrary to its prior representations with respect to informal discovery and on-going settlement discussions, Petitioner filed a Motion for Summary Judgment entirely

predicated upon Registrant's alleged failure to respond to Petitioner's Requests for Admission and other discovery requests. Registrant, in turn, was forced to turn its attention away from progression of the case, especially meaningful settlement discussions, to oppose this Motion, and filed its response on July 18, 2008. Petitioner filed its reply to Registrant's response on August 7, 2008.

On October 15, 2008, the Board issued an Order denying Petitioner's Motion for Summary Judgment, and permitting Registrant to respond to Petitioner's Requests for Admissions. Thereafter, on November 4, 2008, Registrant timely responded to Petitioner's Requests for Admissions and on November 5, 2008 submitted its answers to Petitioner's Interrogatories and responses to Petitioner's Request for Documents, as requested by Petitioner, in lieu of its earlier insistence on conducting informal discovery. (See Exhibit 4 to Registrant's Opposition and Perry Decl. ¶ 8).

With the summary judgment motion resolved, and Petitioner apparently no longer requesting informal discovery, Registrant was able to address Petitioner's outstanding answers and responses to Registrant's Discovery Requests. Accordingly, roughly just one week after the Board's Order, on October 24, 2008, Registrant notified Petitioner by letter of its desire to schedule a telephonic discovery conference ("discovery conference") as required by TMEP § 523.02 to discuss Petitioner's total lack of answers to Registrant's interrogatories and documents Petitioner promised to supplement and/or did not produce. (Attached as Exhibit C; See also Declaration of John P. Luther, attached ("Luther Decl."))

Petitioner and Registrant subsequently exchanged a flurry of correspondence in an attempt to schedule Registrant's requested discovery conference. (Attached chronologically as Exhibit D) Finally, Registrant's requested discovery conference was scheduled for November 5, 2008, almost two weeks after Registrant's initial request. (See Luther Decl.) During this discovery conference, Petitioner expressed a desire to resume settlement discussions, and so the parties agreed to postpone the discovery conference until November 12, 2008 to allow the parties to explore settlement possibilities. (Attached as Exhibit E; See also Luther Decl.)

On November 10, 2008, Petitioner requested to postpone the scheduled November 12, 2008 discovery conference to allow the parties to continue to discuss viable settlement options. (See Luther

Decl. ¶ 10). Registrant again agreed, and rescheduled the conference for Monday, November 17, 2008. (Attached as Exhibit F). On November 17, as the parties did not appear to be close to reaching any settlement agreement, Registrant proceeded with the discovery conference as scheduled.

Registrant began the conference by discussing Petitioner's complete failure to answer any of Registrant's interrogatories. (See Luther Decl.) As the total number of interrogatories was in dispute, Petitioner agreed to answer a revised set of interrogatories, the count of which totaling no more than seventy-five. (See Luther Decl.) Accordingly, the following day, Registrant revised its interrogatories in good faith, inserting agreed-upon language, as suggested in TBMP § 405.03(d), and served Petitioner with its Revised First Set of Interrogatories, as agreed. (Attached as Exhibit G; See also Luther Decl.).

Registrant was unfortunately unable to resolve all of the outstanding discovery issues in this telephonic conference as counsel for Petitioner, in the middle of discussions, unexpectedly informed Registrant it needed to end the conference and requested to reschedule yet again for the following day. (See Luther Decl.) Registrant agreed for the *third time* to reschedule the remainder of the discovery conference, and set it for Tuesday, November 18, 2008. (See Luther Decl.)

On Tuesday, November 18, 2008, Registrant completed its TMEP § 523.02 discovery conference. (See Luther Decl.) At the start of the call, Registrant notified Petitioner it would be serving its Revised First Set of Interrogatories on Petitioner, as previously agreed, that same day. (See Luther Decl.) Contrary to prior representations made the previous day, however, Petitioner notified Registrant that it was objecting to Registrant's taking of discovery at this point, and would not answer any of Registrant's interrogatories. (See Luther Decl.)

Registrant was additionally unable to resolve its issues with respect to Petitioner's responses to Registrant's requests for production of documents. (See Luther Decl.) To date, Petitioner has produced 2 documents totaling 7 pages, and stands on its objections to a large number of Registrant's requests. (See Exhibit B). Registrant has repeatedly asserted to Petitioner that these requests are relevant and go to Petitioner's standing in this matter, potential damages, Petitioner's knowledge of Registrant and its use, Petitioner's intent and alleged good faith in selecting its mark, its bona fide intent-to-use its mark and a

myriad of additional issues, such as set forth in Registrant's Affirmative Defenses, and nonetheless are relevant as reasonably calculated to lead to the discovery of admissible evidence. (See Luther Decl.)

Petitioner refuses to answer any of Registrant's interrogatories or provide requested documents, and Registrant considers these answers and requests relevant and potentially important to this case.

## **II. MOTION TO COMPEL**

As indicated, Petitioner objects to Registrant's Discovery Requests and states, in essence, that certain information sought to be discovered by Registrant is untimely and/or, *inter alia*, overly broad, oppressive, unduly burdensome and not relevant to a claim or defense of any party in this proceeding, nor reasonably calculated to lead to the discovery of admissible evidence and/or confidential and/or immune from discovery due to attorney-client and/or work product privilege. Further, to the extent information sought by Registrant was deemed relevant, or not privileged, Petitioner's Responses are woefully inadequate, incomplete, vague, evasive and improperly limited by spurious allegations that Registrant's Requests are vague, burdensome, overly broad and beyond the scope of this litigation.

In view of Petitioner's non-substantive Answers and inadequate Responses, and reasons therefor, Registrant Petitioner believes that its discovery requests should be compelled for the following reasons:

### **PETITIONER'S ANSWERS TO REGISTRANT'S INTERROGATORIES**

Petitioner has not submitted a single substantive answer to Registrant's interrogatories. As a compromise with Petitioner, and in an effort to avoid further motions before the Board, Registrant agreed to amend its Interrogatories in accordance with TBMP § 405.03(d), and Petitioner initially agreed to provide answers if Registrant revised its interrogatories. Accordingly, Registrant revised its interrogatories in good faith and served its Revised First Set of Interrogatories on Petitioner, as agreed. (See Luther Decl.)

Petitioner has now objected to this revised set of interrogatories as being untimely, when they were originally served on April 14, 2008, prior to the close of discovery. Registrant respectfully requests

the Board compel Petitioner's answers to the revised set of interrogatories, as TBMP § 405.03(e) makes clear that a revised set of interrogatories serves as a substitute for an excessive set of interrogatories and is thus deemed timely if the excessive set was timely.

## **PETITIONER'S RESPONSES TO REQUESTS FOR PRODUCTION**

### **REQUEST NO. 2**

Petitioner refuses to provide the requested documentation as allegedly non-relevant. Such documents are highly relevant to standing, damages, Petitioner's alleged bona fide intent-to-use its mark, the validity of Petitioner's trademark rights, laches, acquiescence, estoppel, Petitioner's intent, alleged good faith and/or Registrant's overall protection of its intellectual property rights. The requested information is further relevant to Registrant's affirmative defenses in this matter, and in general is reasonably calculated to lead to the discovery of admissible evidence.

Registrant requests the Board order the production of this highly relevant information.

### **REQUEST NO. 4**

Petitioner refuses to provide the requested documentation as allegedly non-relevant. Such documents are highly relevant to standing, damages, Petitioner's alleged bona fide intent-to-use its mark, the validity of Petitioner's trademark rights, laches, acquiescence, estoppel, Petitioner's intent, alleged good faith and/or Registrant's overall protection of its intellectual property rights. The requested information is further relevant to Registrant's affirmative defenses in this matter, and in general is reasonably calculated to lead to the discovery of admissible evidence.

Registrant requests the Board order the production of this highly relevant information.

### **REQUEST NO. 5**

Petitioner has objected to this request as, *inter alia*, vague, unduly burdensome, and on the basis of attorney-client privilege. Petitioner fails to state why this request is vague, however Registrant states with particularity exactly what documents it requests. Further, Registrant is willing to accept representative samples of said documents, to the extent they are not privileged.

Petitioner further refuses to provide the requested documentation as allegedly non-relevant. Such documents are highly relevant to standing, damages, Petitioner's alleged bona fide intent-to-use its mark, the validity of Petitioner's trademark rights, laches, acquiescence, estoppel, Petitioner's intent, alleged good faith and/or Registrant's overall protection of its intellectual property rights. The requested information is further relevant to Registrant's affirmative defenses in this matter, and in general is reasonably calculated to lead to the discovery of admissible evidence.

Registrant requests the Board order the production of this highly relevant information.

#### **REQUEST NO. 6**

Petitioner has objected to this request as, *inter alia*, unduly burdensome, cumulative, and on the basis of attorney-client privilege. Petitioner fails to explain why it considers this request to be cumulative, and Registrant states it is not, as a different request is being propounded. Registrant is willing to accept representative samples of said documents, to the extent they are not privileged.

Registrant requests that the Board order production of any and all non-privileged documents responsive to the request, as such documents are highly relevant to standing, damages, Petitioner's alleged bona fide intent-to-use its mark, the validity of Petitioner's trademark rights, laches, acquiescence, estoppel, Petitioner's intent, alleged good faith and/or Registrant's overall protection of its intellectual property rights. The requested information is further relevant to Registrant's affirmative defenses in this matter, and in general is reasonably calculated to lead to the discovery of admissible evidence.

In any event, Petitioner has agreed to provide requested non-privileged information under protective order, which is and has been in place, and thus Registrant requests the Board order the production of this highly relevant information.

#### **REQUEST NO. 7**

Petitioner has objected to this request as, *inter alia*, unduly burdensome, cumulative, and on the basis of attorney-client privilege. Petitioner fails to explain why it considers this request to be cumulative, and Registrant states it is not, as a different request is being propounded. Registrant is willing to accept representative samples of said documents, to the extent they are not privileged.



Registrant requests that the Board order production of the highly relevant requested information, as such documents are highly relevant to standing, damages, Petitioner's alleged bona fide intent-to-use its mark, the validity of Petitioner's trademark rights, laches, acquiescence, estoppel, Petitioner's intent, alleged good faith and/or Registrant's overall protection of its intellectual property rights. The requested information is further relevant to Registrant's affirmative defenses in this matter, and in general is reasonably calculated to lead to the discovery of admissible evidence.

Registrant requests the Board order the production of this highly relevant information.

#### **REQUEST NO. 8**

Petitioner has objected to this request as, *inter alia*, vague, unduly burdensome, cumulative, and on the basis of attorney-client privilege. Petitioner fails to state why this request is vague, however Registrant states with particularity exactly what documents it requests. Petitioner further fails to explain why it considers this request to be cumulative, and Registrant states it is not, as a different request is being propounded. Registrant will accept non-privileged representative samples of said documents.

Petitioner further refuses to provide the requested documentation as allegedly non-relevant. Such documents are highly relevant to standing, damages, Petitioner's alleged bona fide intent-to-use its mark, the validity of Petitioner's trademark rights, laches, acquiescence, estoppel, Petitioner's intent, alleged good faith and/or Registrant's overall protection of its intellectual property rights. The requested information is further relevant to Registrant's affirmative defenses in this matter, and in general is reasonably calculated to lead to the discovery of admissible evidence.

Registrant requests the Board order the production of this highly relevant information.

#### **REQUEST NO. 9**

Petitioner has objected to this request as, *inter alia*, unduly burdensome, cumulative, and on the basis of attorney-client privilege. Petitioner fails to explain why it considers this request to be cumulative, and Registrant states it is not, as a different request is being propounded. Registrant is willing to accept non-privileged representative samples of said documents.

Such documents are highly relevant to standing, damages, Petitioner's alleged bona fide intent-to-use its mark, the validity of Petitioner's trademark rights, laches, acquiescence, estoppel, Petitioner's intent, alleged good faith and/or Registrant's overall protection of its intellectual property rights. The requested information is further relevant to Registrant's affirmative defenses in this matter, and in general is reasonably calculated to lead to the discovery of admissible evidence.

Registrant requests the Board order the production of this highly relevant information.

#### **REQUEST NO. 12**

Petitioner has objected to this request as, *inter alia*, unduly burdensome, cumulative, and on the basis of attorney-client privilege. Petitioner fails to explain why it considers this request to be cumulative, and Registrant states it is not, as a different request is being propounded. Registrant is willing to accept non-privileged representative samples of said documents.

Petitioner further refuses to provide the requested documentation as, *inter alia*, allegedly non-relevant, and available as public record. However, notwithstanding that the requested information may be in a public record, Registrant must be sure of obtaining complete files, and thus to the extent such documentation is not privileged, Registrant requests the Board order its production, as such documents are highly relevant to standing, damages, Petitioner's alleged bona fide intent-to-use its mark, the validity of Petitioner's trademark rights, laches, acquiescence, estoppel, Petitioner's intent, alleged good faith and/or Registrant's overall protection of its intellectual property rights. The requested information is further relevant to Registrant's affirmative defenses in this matter, and in general is reasonably calculated to lead to the discovery of admissible evidence.

Registrant requests the Board order the production of this highly relevant information.

#### **REQUEST NO. 16**

Petitioner objects to this request as, *inter alia*, unduly burdensome and cumulative. Petitioner fails to explain why it finds this request cumulative, and Registrant states it is not, as a different request is being propounded. Registrant will accept non-privileged representative samples of said documents.

Petitioner further refuses to provide the requested documentation as, *inter alia*, allegedly non-relevant. Such documents are highly relevant to standing, damages, Petitioner's alleged bona fide intent-to-use its mark, the validity of Petitioner's trademark rights, laches, acquiescence, estoppel, Petitioner's intent, alleged good faith and/or Registrant's overall protection of its intellectual property rights. The requested information is further relevant to Registrant's affirmative defenses in this matter, and in general is reasonably calculated to lead to the discovery of admissible evidence.

Registrant requests the Board order the production of this highly relevant information.

#### **REQUEST NO. 17**

Petitioner has objected to this request as, *inter alia*, unduly burdensome, confidential, and on the basis of attorney-client privilege. Registrant is willing to accept representative samples of said documents, to the extent they are not privileged.

Petitioner further refuses to provide the requested documentation as, *inter alia*, allegedly non-relevant. Such documents are highly relevant to standing, damages, Petitioner's alleged bona fide intent-to-use its mark, the validity of Petitioner's trademark rights, laches, acquiescence, estoppel, Petitioner's intent, alleged good faith and/or Registrant's overall protection of its intellectual property rights. The requested information is further relevant to Registrant's affirmative defenses in this matter, and in general is reasonably calculated to lead to the discovery of admissible evidence.

Furthermore, as to the assertion of confidentiality, a protective order is in place and has been for quite some time, and therefore Registrant requests the Board order the production of this highly relevant information.

#### **REQUEST NO. 18**

Petitioner has objected to this request as, *inter alia*, unduly burdensome, cumulative, confidential, and on the basis of attorney-client privilege. Petitioner fails to explain why it considers this request to be cumulative, and Registrant states it is not, as a different request is being propounded. Registrant is willing to accept non-privileged representative samples of said documents.

Petitioner further refuses to provide the requested documentation as, *inter alia*, allegedly non-relevant. Such documents are highly relevant to standing, damages, Petitioner's alleged bona fide intent-to-use its mark, the validity of Petitioner's trademark rights, laches, acquiescence, estoppel, Petitioner's intent, alleged good faith and/or Registrant's overall protection of its intellectual property rights. The requested information is further relevant to Registrant's affirmative defenses in this matter, and in general is reasonably calculated to lead to the discovery of admissible evidence.

Furthermore, as to the assertion of confidentiality, a protective order is in place and has been, and therefore Registrant requests the Board order the production of this highly relevant information.

#### **REQUEST NO. 20**

Petitioner refuses to provide the requested documentation as, *inter alia*, allegedly non-relevant. To the extent such documentation is not privileged, Registrant requests the Board order its production, as such documents are highly relevant to standing, damages, Petitioner's alleged bona fide intent-to-use its mark, the validity of Petitioner's trademark rights, laches, acquiescence, estoppel, Petitioner's intent, alleged good faith and/or Registrant's overall protection of its intellectual property rights. The requested information is further relevant to Registrant's affirmative defenses in this matter, and in general is reasonably calculated to lead to the discovery of admissible evidence.

In any event, Petitioner has agreed to provide requested non-privileged information under protective order, which is and has been in place, and thus Registrant requests the Board order the production of this highly relevant information.

#### **REQUEST NO. 22**

Petitioner objects to this request as, *inter alia*, unduly burdensome and cumulative. Petitioner fails to explain why it find this request cumulative, and Registrant states it is not, as a different request is being propounded. Registrant will accept non-privileged representative samples of said documents.

Petitioner further refuses to provide the requested documentation as, *inter alia*, allegedly non-relevant. Such documents are highly relevant to standing, damages, Petitioner's alleged bona fide intent-to-use its mark, the validity of Petitioner's trademark rights, laches, acquiescence, estoppel, Petitioner's

intent, alleged good faith and/or Registrant's overall protection of its intellectual property rights. The requested information is further relevant to Registrant's affirmative defenses in this matter, and in general is reasonably calculated to lead to the discovery of admissible evidence.

Registrant requests the Board order the production of this highly relevant information.

#### **REQUEST NO. 23**

Petitioner has objected to this request as, *inter alia*, unduly burdensome, cumulative, and confidential. Petitioner fails to explain why it considers this request to be cumulative, and Registrant states it is not, as a different request is being propounded. Registrant is willing to accept representative samples of said documents, to the extent they are not privileged.

Petitioner further refuses to provide the requested documentation as, *inter alia*, allegedly non-relevant. Such documents are highly relevant to standing, damages, Petitioner's alleged bona fide intent-to-use its mark, the validity of Petitioner's trademark rights, laches, acquiescence, estoppel, Petitioner's intent, alleged good faith and/or Registrant's overall protection of its intellectual property rights. The requested information is further relevant to Registrant's affirmative defenses in this matter, and in general is reasonably calculated to lead to the discovery of admissible evidence.

Furthermore, as to the assertion of confidentiality, a protective order is in place and has been, and therefore Registrant requests the Board order the production of this highly relevant information.

#### **REQUEST NO. 26**

Petitioner has objected to this request as, *inter alia*, unduly burdensome and cumulative. Petitioner fails to explain why it considers this request to be cumulative, and Registrant states it is not, as a different request is being propounded. Registrant is willing to accept representative samples of said documents, to the extent they are not privileged.

Petitioner further refuses to provide the requested documentation as, *inter alia*, allegedly non-relevant. Such documents are highly relevant to standing, damages, Petitioner's alleged bona fide intent-to-use its mark, the validity of Petitioner's trademark rights, laches, acquiescence, estoppel, Petitioner's intent, alleged good faith and/or Registrant's overall protection of its intellectual property rights. The

requested information is further relevant to Registrant's affirmative defenses in this matter, and in general is reasonably calculated to lead to the discovery of admissible evidence.

Registrant requests the Board order the production of this highly relevant information.

#### **REQUEST NO. 27**

Petitioner has objected to this request as, *inter alia*, unduly burdensome and confidential.

Registrant is willing to accept non-privileged representative samples of said documents.

Petitioner further refuses to provide the requested documentation as, *inter alia*, allegedly non-relevant. Such documents are highly relevant to standing, damages, Petitioner's alleged bona fide intent-to-use its mark, the validity of Petitioner's trademark rights, laches, acquiescence, estoppel, Petitioner's intent, alleged good faith and/or Registrant's overall protection of its intellectual property rights. The requested information is further relevant to Registrant's affirmative defenses in this matter, and in general is reasonably calculated to lead to the discovery of admissible evidence.

Furthermore, as to the assertion of confidentiality, a protective order is in place and has been, and therefore Registrant requests the Board order the production of this highly relevant information.

#### **REQUEST NO. 28**

Petitioner has objected to this request as, *inter alia*, unduly burdensome and confidential.

Registrant is willing to accept non-privileged representative samples of said documents.

Petitioner further refuses to provide the requested documentation as, *inter alia*, allegedly non-relevant. Such documents are highly relevant to standing, damages, Petitioner's alleged bona fide intent-to-use its mark, the validity of Petitioner's trademark rights, laches, acquiescence, estoppel, Petitioner's intent, alleged good faith and/or Registrant's overall protection of its intellectual property rights. The requested information is further relevant to Registrant's affirmative defenses in this matter, and in general is reasonably calculated to lead to the discovery of admissible evidence.

Furthermore, as to the assertion of confidentiality, a protective order is in place and has been, and therefore Registrant requests the Board order the production of this highly relevant information.

**REQUEST NO. 29**

Petitioner has objected to this request as, *inter alia*, unduly burdensome and confidential.

Registrant is willing to accept non-privileged representative samples of said documents.

Petitioner further refuses to provide the requested documentation as, *inter alia*, allegedly non-relevant. Such documents are highly relevant to standing, damages, Petitioner's alleged bona fide intent-to-use its mark, the validity of Petitioner's trademark rights, laches, acquiescence, estoppel, Petitioner's intent, alleged good faith and/or Registrant's overall protection of its intellectual property rights. The requested information is further relevant to Registrant's affirmative defenses in this matter, and in general is reasonably calculated to lead to the discovery of admissible evidence.

Furthermore, as to the assertion of confidentiality, a protective order is in place and has been, and therefore Registrant requests the Board order the production of this highly relevant information.

**REQUEST NO. 30**

Petitioner has objected to this request as, *inter alia*, unduly burdensome and confidential.

Registrant is willing to accept non-privileged representative samples of said documents.

Petitioner further refuses to provide the requested documentation as, *inter alia*, allegedly non-relevant. Such documents are highly relevant to standing, damages, Petitioner's alleged bona fide intent-to-use its mark, the validity of Petitioner's trademark rights, laches, acquiescence, estoppel, Petitioner's intent, alleged good faith and/or Registrant's overall protection of its intellectual property rights. The requested information is further relevant to Registrant's affirmative defenses in this matter, and in general is reasonably calculated to lead to the discovery of admissible evidence.

Furthermore, as to the assertion of confidentiality, a protective order is in place and has been, and therefore Registrant requests the Board order the production of this highly relevant information.

**REQUEST NO. 31**

Petitioner has objected to this request as, *inter alia*, unduly burdensome and confidential.

Registrant is willing to accept non-privileged representative samples of said documents.

Petitioner further refuses to provide the requested documentation as, *inter alia*, allegedly non-relevant. Such documents are highly relevant to standing, damages, Petitioner's alleged bona fide intent-to-use its mark, the validity of Petitioner's trademark rights, laches, acquiescence, estoppel, Petitioner's intent, alleged good faith and/or Registrant's overall protection of its intellectual property rights. The requested information is further relevant to Registrant's affirmative defenses in this matter, and in general is reasonably calculated to lead to the discovery of admissible evidence.

Furthermore, as to the assertion of confidentiality, a protective order is in place and has been, and therefore Registrant requests the Board order the production of this highly relevant information.

### **REQUEST NO. 33**

Petitioner has objects to this request as, *inter alia*, unduly burdensome and cumulative. Petitioner fails to explain why it finds this request cumulative, and Registrant states it is not, as a different request is being propounded. Registrant will accept non-privileged representative samples of said documents.

Petitioner further refuses to provide the requested documentation as, *inter alia*, allegedly non-relevant. Such documents are highly relevant to standing, damages, Petitioner's alleged bona fide intent-to-use its mark, the validity of Petitioner's trademark rights, laches, acquiescence, estoppel, Petitioner's intent, alleged good faith and/or Registrant's overall protection of its intellectual property rights. The requested information is further relevant to Registrant's affirmative defenses in this matter, and in general is reasonably calculated to lead to the discovery of admissible evidence.

Registrant requests the Board order the production of this highly relevant information.

### **REQUEST NO. 41**

Petitioner has objected to this request as, *inter alia*, vague, unduly burdensome, cumulative, and on the basis of attorney-client privilege. Petitioner fails to state why this request is vague, however Registrant states with particularity exactly what documents it requests. Petitioner further fails to explain why it considers this request to be cumulative, and Registrant states it is not, as a different request is being propounded. Registrant is willing to accept representative samples of said documents, to the extent they are not privileged.



Petitioner further refuses to provide the requested documentation as, *inter alia*, allegedly non-relevant. Such documents are highly relevant to standing, damages, Petitioner's alleged bona fide intent-to-use its mark, the validity of Petitioner's trademark rights, laches, acquiescence, estoppel, Petitioner's intent, alleged good faith and/or Registrant's overall protection of its intellectual property rights. The requested information is further relevant to Registrant's affirmative defenses in this matter, and in general is reasonably calculated to lead to the discovery of admissible evidence.

Registrant requests the Board order the production of this highly relevant information.

#### **REQUEST NO. 42**

Petitioner has objected to this request as, *inter alia*, unduly burdensome and cumulative. Petitioner fails to explain why it considers this request to be cumulative, and Registrant states it is not, as a different request is being propounded. Registrant is willing to accept representative samples of said documents, to the extent they are not privileged.

Petitioner further refuses to provide the requested documentation as, *inter alia*, allegedly non-relevant. Such documents are highly relevant to standing, damages, Petitioner's alleged bona fide intent-to-use its mark, the validity of Petitioner's trademark rights, laches, acquiescence, estoppel, Petitioner's intent, alleged good faith and/or Registrant's overall protection of its intellectual property rights. The requested information is further relevant to Registrant's affirmative defenses in this matter, and in general is reasonably calculated to lead to the discovery of admissible evidence.

Registrant requests the Board order the production of this highly relevant information.

#### **REQUEST NO. 47**

Petitioner has objected to this request as, *inter alia*, unduly burdensome and confidential. Registrant is willing to accept non-privileged representative samples of said documents.

Petitioner refuses to provide the requested documentation as, *inter alia*, allegedly non-relevant. Such documents are highly relevant to standing, damages, Petitioner's alleged bona fide intent-to-use its mark, the validity of Petitioner's trademark rights, laches, acquiescence, estoppel, Petitioner's intent, alleged good faith and/or Registrant's overall protection of its intellectual property rights. The requested

information is further relevant to Registrant's affirmative defenses in this matter, and in general is reasonably calculated to lead to the discovery of admissible evidence.

Furthermore, as to the assertion of confidentiality, a protective order is in place and has been, and therefore Registrant requests the Board order the production of this highly relevant information.

#### **REQUEST NO. 49**

Petitioner will not respond to this Request for reasons of privilege, and, *inter alia*, that such is of a public record. However, notwithstanding that the requested information may be in a public record, Registrant must be sure of obtaining complete files, and thus to the extent such documentation is not privileged, Registrant requests the Board order its production, as such documents are highly relevant to standing, damages, Petitioner's alleged bona fide intent-to-use its mark, the validity of Petitioner's trademark rights, laches, acquiescence, estoppel, Petitioner's intent, alleged good faith and/or Registrant's overall protection of its intellectual property rights. The requested information is further relevant to Registrant's affirmative defenses in this matter, and in general is reasonably calculated to lead to the discovery of admissible evidence.

In any event, Petitioner has agreed to provide requested non-privileged information under protective order, which is and has been in place, and thus Registrant requests the Board order the production of this highly relevant information.

#### **REQUEST NO. 50**

Petitioner refuses to provide the requested documentation as, *inter alia*, unduly burdensome and allegedly non-relevant. Registrant will accept non-privileged representative samples of said documents.

To the extent such documentation is not privileged, Registrant requests the Board order its production, as such documents are highly relevant to standing, damages, Petitioner's alleged bona fide intent-to-use its mark, the validity of Petitioner's trademark rights, laches, acquiescence, estoppel, Petitioner's intent, alleged good faith and/or Registrant's overall protection of its intellectual property rights. The requested information is further relevant to Registrant's affirmative defenses in this matter, and in general is reasonably calculated to lead to the discovery of admissible evidence.

Registrant requests the Board order the production of this highly relevant information.

**REQUEST NO. 51**

Petitioner has objected to this request as, *inter alia*, unduly burdensome and cumulative.

Petitioner fails to explain why it considers this request to be cumulative, and Registrant states it is not, as a different request is being propounded. Registrant is willing to accept representative samples of said documents, to the extent they are not privileged.

Petitioner further refuses to provide the requested documentation as, *inter alia*, allegedly non-relevant. Such documents are highly relevant to standing, damages, Petitioner's alleged bona fide intent-to-use its mark, the validity of Petitioner's trademark rights, laches, acquiescence, estoppel, Petitioner's intent, alleged good faith and/or Registrant's overall protection of its intellectual property rights. The requested information is further relevant to Registrant's affirmative defenses in this matter, and in general is reasonably calculated to lead to the discovery of admissible evidence.

Registrant requests the Board order the production of this highly relevant information.

**REQUEST NO. 52**

Petitioner objects to this request as, *inter alia*, unduly burdensome, cumulative, confidential and on the basis of attorney-client privilege. Petitioner fails to explain why it finds this request cumulative, and Registrant states it is not, as a different request is being propounded. Registrant is willing to accept representative samples of said documents, to the extent they are not privileged.

Petitioner further refuses to provide the requested documentation as, *inter alia*, allegedly non-relevant. Such documents are highly relevant to standing, damages, Petitioner's alleged bona fide intent-to-use its mark, the validity of Petitioner's trademark rights, laches, acquiescence, estoppel, Petitioner's intent, alleged good faith and/or Registrant's overall protection of its intellectual property rights. The requested information is further relevant to Registrant's affirmative defenses in this matter, and in general is reasonably calculated to lead to the discovery of admissible evidence.

Furthermore, as to the assertion of confidentiality, a protective order is in place and has been, and therefore Registrant requests the Board order the production of this highly relevant information.

### **REQUEST NO. 53**

Petitioner has objected to this request as, *inter alia*, unduly burdensome, confidential, and on the basis of attorney-client privilege. Registrant is willing to accept representative samples of said documents, to the extent they are not privileged.

Petitioner further refuses to provide the requested documentation as, *inter alia*, allegedly non-relevant. Such documents are highly relevant to standing, damages, Petitioner's alleged bona fide intent-to-use its mark, the validity of Petitioner's trademark rights, laches, acquiescence, estoppel, Petitioner's intent, alleged good faith and/or Registrant's overall protection of its intellectual property rights. The requested information is further relevant to Registrant's affirmative defenses in this matter, and in general is reasonably calculated to lead to the discovery of admissible evidence.

Furthermore, as to the assertion of confidentiality, Petitioner has agreed to provide the information pursuant to a protective order, which is in place and has been for quite some time, and therefore Registrant requests the Board order the production of this highly relevant information.

### **REQUEST NO. 54**

Petitioner has objected to this request as, *inter alia*, unduly burdensome and confidential. Registrant is willing to accept non-privileged representative samples of said documents.

Petitioner refuses to provide the requested documentation as, *inter alia*, allegedly non-relevant. Such documents are highly relevant to standing, damages, Petitioner's alleged bona fide intent-to-use its mark, the validity of Petitioner's trademark rights, laches, acquiescence, estoppel, Petitioner's intent, alleged good faith and/or Registrant's overall protection of its intellectual property rights. The requested information is further relevant to Registrant's affirmative defenses in this matter, and in general is reasonably calculated to lead to the discovery of admissible evidence.

Furthermore, as to the assertion of confidentiality, a protective order is in place and has been, and therefore Registrant requests the Board order the production of this highly relevant information.

### **REQUEST NO. 55**

Petitioner refuses to provide the requested documentation relating to reports, memoranda,

correspondence or other documents that refer or relate to the retention of experts, as protected by privilege. Registrant requests that the Board order production of any and all non-privileged documents responsive to the request, as it seeks information highly relevant to standing, damages, Petitioner's alleged bona fide intent-to-use its mark, the validity of Petitioner's trademark rights, laches, acquiescence, estoppel, Petitioner's intent, alleged good faith and/or Registrant's overall protection of its intellectual property rights. The requested information is further relevant to Registrant's affirmative defenses in this matter, and in general is reasonably calculated to lead to the discovery of admissible evidence.

In any event, Petitioner has agreed to provide requested non-privileged information under protective order, which is and has been in place, and thus Registrant requests the Board order the production of this highly relevant information.

#### **REQUEST NO. 58**

Petitioner has objected to this Request on the basis of its non-substantive objection to Registrant's interrogatories. As Registrant has revised its interrogatories and propounded same to Petitioner, Registrant requests that the Board order production of the highly relevant requested information in this Request, as such documents are highly relevant to standing, damages, Petitioner's alleged bona fide intent-to-use its mark, the validity of Petitioner's trademark rights, laches, acquiescence, estoppel, Petitioner's intent, alleged good faith and/or Registrant's overall protection of its intellectual property rights. The requested information is further relevant to Registrant's affirmative defenses in this matter, and in general is reasonably calculated to lead to the discovery of admissible evidence.

Registrant requests the Board order the production of this highly relevant information.

#### **REQUEST NO. 59**

Petitioner has objected to this request as, *inter alia*, unduly burdensome, cumulative, and on the basis of attorney-client privilege. Petitioner fails to explain why it finds this request to be cumulative, and Registrant states it is not, as a different request is being propounded. Registrant is willing to accept representative samples of said documents, to the extent they are not privileged.

Petitioner further refuses to provide the requested documentation as, *inter alia*, allegedly non-relevant. Such documents are highly relevant to standing, damages, Petitioner's alleged bona fide intent-to-use its mark, the validity of Petitioner's trademark rights, laches, acquiescence, estoppel, Petitioner's intent, alleged good faith and/or Registrant's overall protection of its intellectual property rights. The requested information is further relevant to Registrant's affirmative defenses in this matter, and in general is reasonably calculated to lead to the discovery of admissible evidence.

Registrant requests the Board order the production of this highly relevant information.

#### **REQUEST NO. 60**

Petitioner has objected to this Request on the basis of its non-substantive objection to Registrant's interrogatories. As Registrant has revised its interrogatories and propounded same to Petitioner, Registrant requests that the Board order production of the highly relevant requested information in this Request, as such documents are highly relevant to standing, damages, Petitioner's alleged bona fide intent-to-use its mark, the validity of Petitioner's trademark rights, laches, acquiescence, estoppel, Petitioner's intent, alleged good faith and/or Registrant's overall protection of its intellectual property rights. The requested information is further relevant to Registrant's affirmative defenses in this matter, and in general is reasonably calculated to lead to the discovery of admissible evidence.

Registrant requests the Board order the production of this highly relevant information.

#### **REQUEST NO. 61**

Petitioner has objected to this request as, *inter alia*, vague, unduly burdensome, and on the basis of attorney-client privilege. Petitioner fails to state why this request is vague, however Registrant states with particularity exactly what documents it requests. Further, Registrant is willing to accept representative samples of said documents, to the extent they are not privileged.

Petitioner further will not respond to this Request for reasons of relevancy and, *inter alia*, that such is of a public record. However, notwithstanding that the requested information may be in a public record, Registrant must be sure of obtaining complete files, and thus to the extent such documentation is not privileged, Registrant requests the Board order its production, as such documents are highly relevant

to standing, damages, Petitioner's alleged bona fide intent-to-use its mark, the validity of Petitioner's trademark rights, laches, acquiescence, estoppel, Petitioner's intent, alleged good faith and/or Registrant's overall protection of its intellectual property rights. The requested information is further relevant to Registrant's affirmative defenses in this matter, and in general is reasonably calculated to lead to the discovery of admissible evidence.

Registrant requests the Board order the production of this highly relevant information.

#### **REQUEST NO. 62**

Petitioner has objected to this request as, *inter alia*, unduly burdensome and cumulative. Petitioner fails to explain why it considers this request to be cumulative, and Registrant states it is not, as a different request is being propounded. Registrant is willing to accept representative samples of said documents, to the extent they are not privileged.

Petitioner further refuses to provide the requested documentation as, *inter alia*, allegedly non-relevant. Such documents are highly relevant to standing, damages, Petitioner's alleged bona fide intent-to-use its mark, the validity of Petitioner's trademark rights, laches, acquiescence, estoppel, Petitioner's intent, alleged good faith and/or Registrant's overall protection of its intellectual property rights. The requested information is further relevant to Registrant's affirmative defenses in this matter, and in general is reasonably calculated to lead to the discovery of admissible evidence.

Registrant requests the Board order the production of this highly relevant information.

#### **REQUEST NO. 63**

Petitioner has objected to this request as, *inter alia*, unduly burdensome and cumulative. Petitioner fails to explain why it considers this request to be cumulative, and Registrant states it is not, as a different request is being propounded. Registrant is willing to accept representative samples of said documents, to the extent they are not privileged.

Petitioner further refuses to provide the requested documentation as, *inter alia*, allegedly non-relevant. Such documents are highly relevant to standing, damages, Petitioner's alleged bona fide intent-to-use its mark, the validity of Petitioner's trademark rights, laches, acquiescence, estoppel, Petitioner's

intent, alleged good faith and/or Registrant's overall protection of its intellectual property rights. The requested information is further relevant to Registrant's affirmative defenses in this matter, and in general is reasonably calculated to lead to the discovery of admissible evidence.

Registrant requests the Board order the production of this highly relevant information.

#### **REQUEST NO. 64**

Petitioner has objected to this request as, *inter alia*, unduly burdensome and cumulative. Petitioner fails to explain why it considers this request to be cumulative, and Registrant states it is not, as a different request is being propounded. Registrant is willing to accept representative samples of said documents, to the extent they are not privileged.

Petitioner further refuses to provide the requested documentation as, *inter alia*, allegedly non-relevant. Such documents are highly relevant to standing, damages, Petitioner's alleged bona fide intent-to-use its mark, the validity of Petitioner's trademark rights, laches, acquiescence, estoppel, Petitioner's intent, alleged good faith and/or Registrant's overall protection of its intellectual property rights. The requested information is further relevant to Registrant's affirmative defenses in this matter, and in general is reasonably calculated to lead to the discovery of admissible evidence.

Registrant requests the Board order the production of this highly relevant information.

### **III. MOTION TO EXTEND**

Registrant respectfully requests a sixty (60) day extension of the testimony periods pending the resolution of this motion.

Registrant does not seek a suspension and extension of time for the purposes of delay. In view of the extensive requested information which Petitioner has willfully neglected or declined to provide, it is requested that the testimony period be extended by sixty (60) days to allow Registrant time to review Petitioner's discovery responses as ordered by the Board. As detailed above, Registrant has been diligent during the discovery period. Registrant has also made good faith effort to resolve this matter before filing

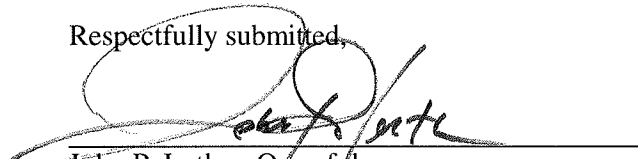


a motion to compel. Petitioner, however, despite repeated requests, has failed to make good on its promises and obligations.

#### IV. CONCLUSION

For the reasons stated above, Registrant respectfully requests that the Board grant Registrant's Motion to Compel and order Petitioner to fully respond to Registrant's Discovery Requests *without objections*. Registrant also respectfully requests that the Board grant Registrant's motion for extension of the testimony period to allow Registrant time to review Petitioner's discovery responses as ordered by the Board.

Respectfully submitted,

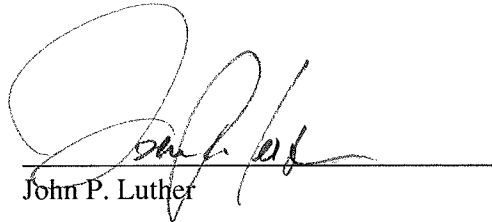


John P. Luther, One of the  
Attorneys for Petitioner

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Burton S. Ehrlich  
John P. Luther  
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**CERTIFICATE OF ELECTRONIC FILING**

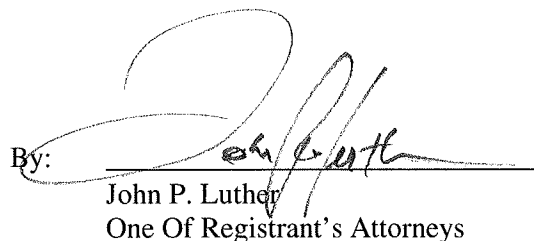
I hereby certify that a copy of the foregoing REGISTRANT'S COMBINED MOTION TO COMPEL AND RESET TESTIMONY PERIODS, along with attached DECLARATION OF JOHN P. LUTHER and EXHIBITS is being electronically filed with the United States Patent and Trademark Office on this 21<sup>st</sup> day of November, 2008.

  
John P. Luther

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing REGISTRANT'S COMBINED MOTION TO COMPEL AND RESET TESTIMONY PERIODS along with attached DECLARATION OF JOHN P. LUTHER and EXHIBITS was served upon Petitioner's counsel on this 21st day of November 2008 by email to [lperry@perryip.com](mailto:lperry@perryip.com) and by facsimile to (415) 398-6306, and also deposited with the U.S. Postal Service as first class mail, postage prepaid, addressed to counsel for Petitioner, as follows:

E. Lynn Perry  
Perry IP Group A.L.C.  
4 Embarcadero Center - 39th Floor  
San Francisco, CA 94111  
T 415-398-6300 (F 415-398-6306)  
[lperry@perryip.com](mailto:lperry@perryip.com)

By:   
John P. Luther  
One Of Registrant's Attorneys

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
TRADEMARK TRIAL AND APPEAL BOARD**

U.S. Trademark Registration No.1,758,520  
Registered Mark: SALAD BAR

Fresh Express Incorporated,

Petitioner,

vs.

Cancellation No. 92047162

Supreme Oil Company,

Registrant.

**DECLARATION OF JOHN P. LUTHER  
IN SUPPORT OF REGISTRANT'S COMBINED MOTION TO COMPEL  
AND MOTION TO RESET TESTIMONY PERIODS**

1. I am an attorney of the law firm of Ladas & Parry LLP, and am counsel of record for Registrant Supreme Oil Company (hereinafter "Registrant").
2. I have personal knowledge of the matters stated herein. I make this declaration in support of Registrant's Combined Motion to Compel and Motion to Reset Testimony Periods.
3. On April 14, 2008, Registrant properly served on Petitioner Registrant's First Set of Interrogatories. A true and correct copy of Registrant's Interrogatories is attached as Exhibit A.
4. On April 14, 2008, Registrant properly served on Petitioner Registrant's First Set of Requests for Production of Documents. A true and correct copy of Registrant's Document Requests is attached as Exhibit A.

5. On May 16, 2008 Petitioner submitted its answers to Registrant's Interrogatories and responses to Registrant's Request for Documents. Its answers were simply a general objection to the number of interrogatories and Petitioner's production consisted of two documents totaling seven pages. A true and correct copy of the documents received by Registrant is attached as Exhibit B.

6. On October 24, 2008, Registrant notified Petitioner of its desire to schedule a telephonic discovery conference as per TMEP § 523.02. A true and correct copy of this letter is attached as Exhibit C.

7. Petitioner and Registrant subsequently exchanged a flurry of correspondence in an attempt to schedule Registrant's requested discovery conference. A true and correct copy of Registrant and Petitioner's correspondence is attached as Exhibit D.

8. Registrant's requested discovery conference was scheduled for November 5, 2008.

9. On November 5, 2008 Petitioner expressed a desire to resume settlement discussions, and the parties agreed to postpone the discovery conference until November 12, 2008. A true and correct copy of Registrant's letter confirming this is attached as Exhibit E.

10. On November 10, 2008, Petitioner requested to postpone the scheduled November 12, 2008 discovery conference.

11. The discovery conference was rescheduled for Monday, November 17, 2008. A true and correct copy of Registrant's email confirming such is attached as Exhibit F.

12. On November 17, 2008, Registrant began the discovery conference by discussing Petitioner's complete failure to answer any of Registrant's interrogatories. As the total number of interrogatories was in dispute, Petitioner agreed to answer a revised set of interrogatories, the count of which totaling no more than seventy-five.

13. In the middle of discussions on November 17, 2008, Petitioner informed Registrant it needed to end the conference and requested to reschedule yet again for the following day.

14. On November 18, 2008, Registrant revised its interrogatories and served Petitioner with its Revised First Set of Interrogatories, as agreed. A true and correct copy of these Revised Interrogatories is attached as Exhibit G.

15. Registrant agreed to reschedule the remainder of the discovery conference, and set it for Tuesday, November 18, 2008.

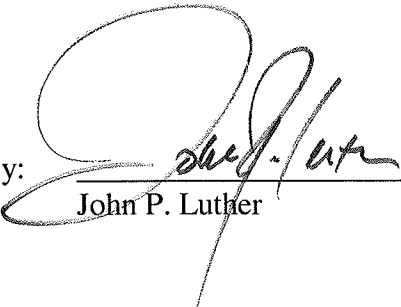
16. On November 18, 2008, at the start of the discovery conference, Registrant notified Petitioner it would be serving its Revised First Set of Interrogatories on Petitioner, as previously agreed, that same day. Petitioner notified Registrant that it was objecting to Registrant's taking of discovery at this point, and would not answer any of Registrant's interrogatories.

17. During the discovery conference on November 18, 2008, Petitioner stood on its objections to Registrant's Requests for Production, and refused to provide any additional documents, and additionally stated that notwithstanding its objection to particular requests Petitioner generally objected to providing any responses to Registrant's discovery requests at this point in the proceeding.

18. Registrant has repeatedly asserted to Petitioner that these requests are relevant and go to Petitioner's standing in this matter, potential damages, Petitioner's knowledge of Registrant and its use, Petitioner's intent and alleged good faith in selecting its mark, its bona fide intent-to-use its mark and a myriad of additional issues, such as set forth in Registrant's Affirmative Defenses, and nonetheless are relevant as reasonably calculated to lead to discovery of admissible evidence.

19. Being hereby warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. § 1001, and that such willful false statements may jeopardize the validity of Registrant's registration, I declare that the foregoing statements made of my own knowledge are true, and all statements made on information and belief are believed to be true.

Executed in Chicago, Illinois on November 21, 2008

By:   
John P. Luther

Ladas & Parry LLP  
224 S. Michigan Avenue  
Suite 1600  
Chicago, IL 60604  
(312) 427-1300

# EXHIBIT

A

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
TRADEMARK TRIAL AND APPEAL BOARD**

U.S. Trademark Registration No.1,758,520  
Registered Mark: SALAD BAR

Fresh Express Incorporated,

Petitioner,

vs.

Supreme Oil Company,

Registrant.

Cancellation No. 92047162

**REGISTRANT'S FIRST SET OF  
INTERROGATORIES TO  
PETITIONER (Nos. 1-29)**

**REGISTRANT'S FIRST SET OF INTERROGATORIES TO PETITIONER**

Pursuant to Rule 33 of the Federal Rules of Civil Procedure and Rule 2.120 of the Trademark Rules of Practice, Registrant Supreme Oil Company ("Registrant" or "Supreme"), by its attorneys, requests that Petitioner, Fresh Express Incorporated ("Petitioner" or "Fresh Express") answer the following interrogatories.

**INSTRUCTIONS AND DEFINITIONS**

A. These Interrogatories are to be regarded as continuing and Petitioner is requested to provide promptly, by way of supplementary answers thereto, such additional information as may hereafter be obtained by Petitioner or any Person or entity acting on Petitioner's behalf which will augment or otherwise modify any answers given to the following interrogatories.

B. Reference to the term "Registrant" refers to Supreme Oil Company, its employees and agents, and all other persons acting on its behalf or under its direction or control, including



its representatives or any person acting on its behalf, or the officers, directors, agents, employees, attorneys, sales representatives, or any person acting on behalf of any merged, consolidated or acquired predecessor, and the requested Interrogatories shall be answered in conformance with such construction.

C. Reference to the term "Petitioner," "You" or "Your" refers to Fresh Express Incorporated in the manner which will provide a full response by Petitioner, its employees and agents, and any and all other persons acting on its behalf or under its direction or control, including its representatives or any person acting on its behalf, or the officers, directors, agents, employees, attorneys, sales representatives, or any person acting on behalf of any merged, consolidated or acquired predecessor, and the requested Interrogatories shall be answered in conformance with such construction.

D. The term "Registrant's Mark" as used herein refers to the mark SALAD BAR shown in Registrant's Registration No. 1,758,520 registered March 16, 1993.

E. The term "Petitioner's Mark" as used herein refers to the mark SALAD BAR EXPRESS shown in Petitioner's Application No. 78/719,905 filed September 23, 2005.

F. In all Interrogatories requesting identification of documents and things, Petitioner should state whether it will make such document or thing available to Registrant for inspection and copying by stating "available"; if Petitioner is unwilling or unable to produce such document or thing for inspection and copying, Petitioner should so indicate by stating "not available" and giving all reasons therefor.

G. The term "document" as used herein utilizes the full meaning of that term as defined in the Federal Rules of Civil Procedure Rule 34 and includes all original writings and all non-identical copies and, without limitations, minutes, correspondence, electronic mail, voice

mail, video tapes, audio tapes, memoranda, agreements, licenses, sketches, diagrams, schematics, handwritten or stenographic notes, periodicals or other publications, purchase orders, sales invoices, bills of sales, advertising or sales literature, pamphlets, reports, records, studies, service manuals, operator manuals, instruction sheets, log sheets, data sheets, diaries, drawings, blueprints, photographs (prints as well as negatives), charts, papers, graphs, indexes, labels, tapes, computer printouts and other materials which are written, printed, typewritten, reproduced or recorded, and from which information can be obtained. Where originals or non-identical copies are not available, "document" also means copies of such originals or non-identical copies.

H. "Communication(s)" includes the disclosure, transfer or exchange of information by any means, written, verbal, electronic or otherwise.

I. The terms "specify," "identify" or "give the identification of" with respect to a document or thing is defined to mean a demand for a detailed description of each specific item identification of which is requested, whether or not it may be privileged or subject to an immunity and whether or not it is in Petitioner's possession, custody or control, by setting forth:

- (a) a description of its type and nature,
- (b) its date,
- (c) the present location and custodian for the original and all copies,
- (d) the names of the writer and recipients of the original and all copies and
- (e) the title or subject matter.

For any individual named as a writer or a recipient of such an item, the individual's full name and address should be stated, together with his present or last position and business affiliation; for any firm or corporation named, its full address should be stated, together with the name, address, and title of the official responsible for preparing or having custody of any such item. A copy of a

document may be provided in lieu of identification to the extent the information called for is clearly available from the face of the copy.

J. The term "identify" or "give the identification of" with respect to a person requires Petitioner to state:

(a) in the case of a natural person, that persons (i) full name; (ii) last known home and business address; (iii) responsibilities with respect to the subject matter of the interrogatory and the periods of time that person had such responsibilities; and (iv) relevant knowledge or participation; or

(b) in the case of corporations, partnerships, proprietorships, unincorporated associations and the like, the (i) full name, including any additional name it does business under; (ii) form and place of organization or incorporation; and (iii) principal place of business.

K. "Date" means the exact day, month and year, if ascertainable and, if not, Petitioner's best approximation thereof.

L. The use of male, female or neutral gender in these interrogatories incorporates all genders and should not be construed to limit the information requested in any way. The use of the singular form of any word includes the plural and vice-versa.

M. If any information is withheld from the answer due to an objection or privilege, state the nature of the information withheld and the basis for the objection or privilege.

## **INTERROGATORIES**

### **INTERROGATORY NO. 1**

Identify: (a) any other business entity(ies) which fully or partly owns or controls Petitioner; and (b) identify any other business entity(ies) which is fully or partly owned by Petitioner.

### **INTERROGATORY NO. 2**

Describe in detail Petitioner's business from its inception to date, including significant developments in the progress and expansion of its business.

### **INTERROGATORY NO. 3**

Identify all of the responsible individuals, including officers, directors and other managerial employees of Petitioner, who have any responsibility with regard to the marketing, promotion, advertising and sale of Petitioner's goods which use the Petitioner's mark.

### **INTERROGATORY NO. 4**

Identify each affiliate of Petitioner, including, but not limited to, division, parent, subsidiary, controlling shareholder(s) and/or other related company.

INTERROGATORY NO. 5

Identify each different facility, including without limitation headquarters, factory, warehouse, distribution center, that Petitioner uses, including those owned, leased or contracted for by Petitioner, in connection with the production and marketing, distribution and sale of products which use Petitioner's mark, including the role of each such facility therein.

INTERROGATORY NO. 6

Describe in detail each different meaning(s), including connotations and suggestions, of Petitioner's mark in the context of each of the goods with which that mark is used or has been proposed to be used.

INTERROGATORY NO. 7

Describe in detail all surrounding circumstances of the adoption, including the derivation and selection of Petitioner's mark and any documents referring or relating thereto. This description should include without limitation any alternatives considered, the intended meaning and/or connotations discussed, any specific reasons for the selection and adoption of Petitioner's mark, including any connections in meaning between parts of the mark and product characteristics, a specific identification of the persons involved, and the particular person(s) who made the decision(s) on Petitioner's behalf to adopt or select Petitioner's mark.

INTERROGATORY NO. 8

Identify all principal, including distinguishing, characteristics of each different product with which Petitioner uses Petitioner's mark, including the specific intended applications for each of the goods offered by Petitioner under Petitioner's mark and any documents related thereto.

INTERROGATORY NO. 9

Identify each different product description, including without limitation product lists and feature descriptions, which Petitioner has used or intends to use for products under Petitioner's mark.

INTERROGATORY NO. 10

Identify the suggested retail price(s) in the United States for each different product which Petitioner has used in the United States with Petitioner's mark.

INTERROGATORY NO. 11.

If you contend that Registrant's mark has been abandoned, describe in detail all evidence that Registrant's mark has been abandoned, including documents that refer or relate thereto.

INTERROGATORY NO. 12

Identify each different trademark use or proposed use of Petitioner's mark, including of such mark on the goods, their containers, packaging, labels or tags applied thereto, or point of sale displays, including documents, specimens and facsimiles relating to the foregoing.

INTERROGATORY NO. 13

Identify the individual contents within each product sold or proposed to be sold under Petitioner's mark, including but not limited to, any individually packaged containers found within Petitioner's product bearing Petitioner's mark.

INTERROGATORY NO. 14

With respect to the products sold using the Petitioner's mark, describe in detail each different channel of trade by which Petitioner's goods sold under the mark travel from the producer to the end-purchaser, including but not limited to all wholesalers, retails, and distributors and any documents related thereto.

INTERROGATORY NO. 15

Identify the Petitioner's resellers, including without limitation distributors, wholesalers and retailers, and provide a representative list of retail establishments in the U.S. that sell or will sell the products bearing the Petitioner's mark and any documents related thereto.

INTERROGATORY NO. 16

Identify each document relating to, describing or summarizing the demographics of Petitioner's average purchasers for each of the products sold under Petitioner's mark.

INTERROGATORY NO. 17

Identify the geographic extent of sales of the products under Petitioner's mark in the United States, including without limitation the inclusion of each affected State in the United States.

INTERROGATORY NO. 18

Identify the annual sales of the products under Petitioner's marks sold in the United States since their inception, including in dollar value and units of each such product sold.

INTERROGATORY NO. 19

Identify fully each different promotional, advertising, publicity or marketing piece Petitioner has ever published or distributed for products under Petitioner's mark, including without limitation any press releases, publicity releases, trade releases, new product releases, direct mailers, email advertisements, other notices to the trade, directory pages, catalogs, catalog sheets, sales literature, reprints, advertising or other printed matter and any documents referring or relating thereto.

INTERROGATORY NO. 20

Identify and describe all publications by unsolicited third party(ies) relating to Petitioner or Petitioner's mark, including but not limited to print, broadcast and Internet media, third party reviews, informational articles, news and trade reports.



INTERROGATORY NO. 21

Identify all inter-party proceedings involving Petitioner's mark, including but not limited to court or administrative litigation, interference, conflicts, oppositions, cancellation proceedings participated in by Petitioner, and any documents referring or relating thereto.

INTERROGATORY NO. 22

Identify and describe any objections or demands sent or received by Petitioner relating or referring to Petitioner's mark, including the person most knowledgeable of each, the outcome thereof, and any documents referring or relating thereto.

INTERROGATORY NO. 23

Describe in detail the circumstances surrounding Petitioner's first awareness of Registrant's mark, and identify any documents referring or relating thereto.

INTERROGATORY NO. 24

Describe in detail any overlapping geographic areas of concurrent use of Petitioner's products under Petitioner's mark with Registrant's products under Registrant's mark, and any documents relating thereto.

INTERROGATORY NO. 25

Identify whether there has ever been a period during which Petitioner or any other party having rights from Petitioner discontinued use of Petitioner's mark for any of the goods identified in Petitioner's application asserted in these proceedings, including without limitation the inclusive dates of the discontinuance for the goods discontinued, the reason(s) therefor, and the persons most knowledgeable about such use and non-use.

INTERROGATORY NO. 26

Identify each expert witness who may be used at "trial" by Applicant to present evidence under F.R.E. Rules 702, 703 or 705, including the providing of the information for an expert's written report under FRCP 26(a)(2).

INTERROGATORY NO. 27

Identify each transfer of rights, including assignment, license or consents to use of Petitioner's mark, and all documents referring or relating thereto.

INTERROGATORY NO. 28

Describe in detail the circumstances of each instance of actual/potential confusion of source, sponsorship or affiliation regarding Petitioner and Registrant, regarding their respective marks or products under their respective marks, and identify all documents which refer or relate in any way to such confusion or mistake.

INTERROGATORY NO. 29

State whether any trademark searches, including surveys, investigations, research, or availability assessment and/or opinion, with respect to each and any of Petitioner's mark have been conducted and/or obtained, and identify all documents constituting, referring or relating to each.

By: \_\_\_\_\_



One of Registrant's Attorneys

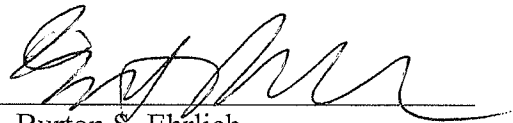
Burton S. Ehrlich  
**Ladas & Parry LLP**  
224 South Michigan Avenue  
Suite 1600  
Chicago, Illinois 60604  
(312) 427-1300

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing REGISTRANT'S FIRST SET OF INTERROGATORIES TO PETITIONER was served upon Petitioner's counsel on this 14<sup>th</sup> day of April, 2008 by deposit with the U.S. Postal Service as first class mail, postage prepaid, addressed to counsel for Petitioner, as follows:

E. Lynn Perry  
Perry IP Group A.L.C.  
4 Embarcadero Center - 39th Floor  
San Francisco, CA 94111  
T 415-398-6300 (F 415-398-6307)  
[lperry@perryip.com](mailto:lperry@perryip.com)

By: \_\_\_\_\_



Burton S. Ehrlich  
One Of Registrant's Attorneys

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
TRADEMARK TRIAL AND APPEAL BOARD**

U.S. Trademark Registration No.1,758,520  
Registered Mark: SALAD BAR

Fresh Express Incorporated,

Petitioner,

vs.

Supreme Oil Company,

Registrant.

Cancellation No. 92047162

**REQUEST FOR DOCUMENTS AND  
TANGIBLE THINGS**

**REGISTRANT'S FIRST REQUEST FOR PRODUCTION OF DOCUMENTS AND  
THINGS TO PETITIONER**

Registrant pursuant to Rule 34 of the Federal Rules of Civil Procedure, requests Petitioner to produce within thirty (30) days from the date of service hereof at the offices of Ladas & Parry LLP, 224 S. Michigan Avenue, Chicago, Illinois 60604, or at another mutually agreeable location, and permit Registrant, or someone acting on its behalf, to inspect and copy such of the following designated documents as are in Petitioner's possession, custody or control.

**DEFINITIONS**

Registrant adopts the Definitions provided in REGISTRANT'S FIRST SET OF INTERROGATORIES TO PETITIONER by reference, as if fully set forth herein.

Petitioner is requested to produce the following documents and things:

1. Representative documents showing all the different goods, of each kind, mode or style

on which the Petitioner's mark is used, has been used, or has been proposed to be used.

2. Documents and things sufficient to determine Petitioner's corporate structure.
3. Documents and things sufficient to determine each of Petitioner's principal places of business.
4. Documents and things sufficient to determine the principal places of business of each parent, subsidiary or affiliate of Petitioner.
5. All documents and things that relate to any marks considered in connection with Petitioner's selection of Petitioner's mark.
6. All documents and things that relate to any trademark searches performed in connection with Petitioner's use or proposed use of Petitioner's mark.
7. All documents and things that relate to opinions as to the availability of Petitioner's mark for use as a trademark in connection with Petitioner's goods or services.
8. All documents and things relating to searches of Petitioner's mark considered for use in connection with each of Petitioner's goods or services.
9. All documents and things relating to the selection or adoption of Petitioner's mark.
10. All documents and things relating to the first use in or to the United States of America of Petitioner's mark in connection with each of the Petitioner's goods or services on which the mark is used.
11. All documents and things that relate to any state or United States Federal application to register any trademark, service mark or trade name that includes Petitioner's mark or any similar marks, including, but not limited to all File Wrappers and Contents thereof

pertaining to any applications.

12. All documents and things that relate to any contacts by Petitioner with the United States Patent and Trademark Office relating to Registrant's mark or to Petitioner's mark or any of Petitioner's applications to register Petitioner's mark.

13. A sample of each different product or service bearing Petitioner's mark that is or has been advertised, offered for sale, sold or distributed by Petitioner, including but not limited to all packages packaged within Petitioner's primary packaging, if any.

14. Representative specimens of each label, tag, placard, insert, stamp, packaging material, container, point of sale display and the like, on which Petitioner's mark is, or at any time has been used, or has been proposed to be used.

15. Representative specimens of catalogs, mailing pieces, brochures, handbills, flyers, offerings, and other pieces of descriptive or promotional literature, directed at potential (or actual) customers, and relating to or describing products or services identified by Petitioner's mark.

16. Representative documents and things relating to the use or proposed use of Petitioner's mark in connection with the specific products identified in any Federal Trademark application of the Cancellation Petition.

17. All documents and things that relate to any investigation, market survey or other research regarding the use or proposed use of Petitioner's mark in connection with the sale of Petitioner's goods or services in or to the United States of America.

18. All formal or informal surveys or polls, studies, research or tests and all documents relating to such surveys, polls, studies, research, or tests which were conducted by or

on behalf of Petitioner relating to Petitioner's mark.

19. All documents which refer to or relate to Registrant and/or Registrant's mark.

20. All license agreements or other agreements relating to use of the Petitioner's mark.

21. Specimens showing the current use of the Petitioner's mark for each product identified in the registration asserted by Petitioner and for any goods or services where the Petitioner claims it uses the mark.

22. Representative specimens of all advertising documents and promotional materials, including, but not limited to, catalogs, circulars, leaflets, direct mail pieces, newspaper and magazine advertisements, ad slicks, sale presentation materials, publicity releases and telephone book advertisements bearing the Petitioner's mark.

23. All documents including, but not limited to, records, memoranda, and correspondence pertaining to the creation, selection, searching, adoption, and earliest use of the Petitioner's mark by or with Petitioner or by any person acting or purporting to act for or on behalf of Petitioner, including all correspondence with design firms, advertising agencies, advertising media and suppliers.

24. All documents including, but not limited to, records, memoranda, and correspondence relating to statements, inquiries, comments or other communications by or from Petitioner's customers, suppliers or other third parties, either written or oral, evidencing any confusion, suspicion, belief or doubt on the part of such customer, supplier or other third party, or lack thereof, as to the relationship between the marks of Petitioner and those of the Registrant.

25. All documents including, but not limited to, records, memoranda, correspondence,

and notes relating to Petitioner's knowledge of Registrant's Federal Trademark Registration Application for the Registrant's mark.

26. All documents describing or illustrating the organization and structure of Petitioner, at present or during the past five years including, but not limited to, organizational charts, job descriptions, and maps and locations of sales offices or distribution centers or manufacturing facilities.

27. Documents describing or illustrating the past or present lines of distribution for any product manufactured, sold or distributed by Petitioner or by any person acting or purporting to act for or on behalf of Petitioner, bearing Petitioner's mark.

28. All documents relating to any periodic reports on market conditions, including market share data, for any product bearing Petitioner's mark.

29. All documents for Petitioner's mark showing Petitioner's codes or numbering systems for identifying Petitioner's products from sales documents, invoices and periodic sales reports.

30. All documents which refer or relate to the U.S. volume of goods or services sold by mark and product type on a quarterly and yearly basis in both unit sales and dollar volume for each product or service and each type of product or service bearing the Petitioner's mark.

31. All documents and things relating to the types of U.S. customers that buy, receive or use Petitioner's goods or services that show the Petitioner's mark.

32. All documents and things relating to any discontinuance of use of Petitioner's mark on any products or services in the U.S.

33. All documents and things relating to a likelihood of confusion of Petitioner's



mark with any other mark.

34. All documents and things relating to any mail, telephone calls, complaints, inquiries or orders regarding the Registrant or Registrant's marks, goods, services or the business activities of the Registrant.

35. All documents and things relating to any communications intended for Registrant.

36. All documents and things relating to any communications where the communicator believed that Registrant or Registrant's marks, goods and services were in some way connected with Petitioner's mark, goods or the business of the Petitioner.

37. All documents and things that relate to any deliberation by Petitioner as to whether Petitioner's mark should be modified or whether the use of Petitioner's mark should be discontinued, reduced or expanded.

38. All documents and things that relate to Petitioner's first awareness of Registrant's mark.

39. All documents and things that relate to Petitioner's first awareness of Registrant.

40. All documents which refer or relate to any communications with Registrant.

41. Any documents which refer or relate to Petitioner's awareness of Registrant or of the marks in use, registered or pending by Registrant.

42. All documents and things reflecting any confusion between Petitioner's goods and services and Registrant's goods and services.

43. All documents and things relating to any communications where the communicator believed that Petitioner or Petitioner's goods or services were in some way connected with Registrant or Registrant's goods.

44. All documents and things that relate to any conflict between the adoption or use, or registration of Petitioner's mark and the marks, terms or designations of any other persons or entities.

45. All documents and things referring or relating to any litigation, opposition, cancellation, or other dispute involving Petitioner's mark.

46. All documents and things that refer or relate to any conflicts or potential conflicts between Petitioner's mark and any other marks, including but not limited to any trademark searches that were performed in connection with the conflict or potential conflict.

47. All documents and things that relate to Petitioner's advertising expenditures in the U.S. for goods or services in connection with Petitioner's mark, for each year.

48. All documents and things that relate to articles or magazines or publications distributed by Petitioner or Petitioner's agents referring or relating to Petitioner's mark or which use or include the words, terms or designations asserted by Petitioner in these proceedings.

49. All documents and things upon which Petitioner intends to rely or place in evidence during the testimony periods of this proceeding.

50. All correspondence between Petitioner and any third-party concerning or mentioning Registrant.

51. All correspondence between Petitioner and any third-party concerning Registrant's mark.

52. All documents that relate to contemplated future use of any of Petitioner's mark by Petitioner, on behalf of Petitioner, or to or for the benefit of Petitioner.

53. All documents that relate to the Petitioner's decision to drop "salad dressings"

from its identification of goods under Petitioner's mark.

54. All documents that discuss or evidence market research, business plans, or the like by Petitioner or on behalf of Petitioner in connection with Petitioner's mark, or any goods or services in connection with Petitioner's mark

55. All reports, memoranda, correspondence or other documents that refer or relate to the retention of experts for use by Petitioner in connection with this Cancellation Action.

56. All reports, memoranda, correspondence or other documents that refer or relate to the opinion of any experts consulted or retained by Petitioner, or by any person or persons acting for or on its behalf, in connection with this Cancellation Action.

58. All documents not previously produced, but identified in response to REGISTRANT'S FIRST SET OF INTERROGATORIES TO PETITIONER or referred to for purposes of preparing a response to those interrogatories.

59. All documents produced by Petitioner in any legal proceedings or Trademark Office proceedings where Petitioner sought to enforce rights in any of the Petitioner's mark.

60. All documents and things referred to, used in preparation of, or used to obtain information for the responses to any of REGISTRANT'S FIRST SET OF INTERROGATORIES TO PETITIONER.

61. All documents and things which support, refer or relate to the allegations of the Petitioner in its Cancellation Petition filed against the Registrant in these proceedings.

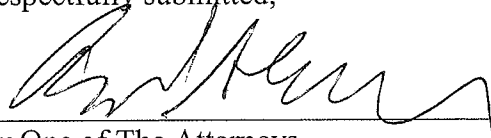
62. Documents showing representative sales in the United States of America or in foreign commerce with the United States of America on a continuous basis for each of the Petitioner's products or goods identified within Petitioner's registrations asserted by the

Petitioner in these proceedings.

63. Documents identifying geographic regions where the Petitioner's products are available in the United States of America.

64. All documents sufficient to identify the stores or accounts selling the Petitioner's products in the United States of America.

Respectfully submitted,



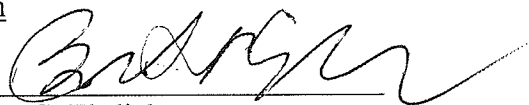
By One of The Attorneys  
For The Registrant

Burton S. Ehrlich  
LADAS & PARRY LLP  
224 South Michigan Avenue  
Suite 1600  
Chicago, Illinois 60604  
(312) 427-1300

### CERTIFICATE OF SERVICE

The undersigned, one of Registrant's attorneys, hereby certifies that on April 14, 2008, he caused true and correct copies of the foregoing REGISTRANT'S FIRST REQUEST FOR PRODUCTION OF DOCUMENTS AND THINGS to be served upon Petitioner's counsel by First Class mail, postage pre-paid on this 14<sup>th</sup> day of April, 2008 to Petitioner's counsel at the following address:

E. Lynn Perry  
Perry IP Group A.L.C.  
4 Embarcadero Center - 39th Floor  
San Francisco, CA 94111  
T 415-398-6300 (F 415-398-6307)  
[lperry@perryip.com](mailto:lperry@perryip.com)



Burton S. Ehrlich

**EXHIBIT**

**B**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

FRESH EXPRESS INCORPORATED,

Petitioner,

v.

SUPREME OIL COMPANY,

Registrant.

Cancellation No.: 92047162

Reg. No. 1,758,520

Issued: March 16, 1993

Mark: SALAD BAR

**PETITIONER'S GENERAL  
OBJECTION TO REGISTRANT'S  
FIRST SET OF INTERROGATORIES**

Pursuant to Rule 33 of the Federal Rules of Civil Procedure and 37 C.F.R. § 2.120,  
Petitioner, Fresh Express Incorporated ("Petitioner"), hereby responds to Registrant's First Set of  
Interrogatories propounded by Registrant, Supreme Oil Company ("Registrant"), as follows:

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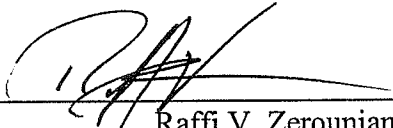
**GENERAL OBJECTION**

Petitioner objects to Registrant's First Set of Interrogatories on the grounds that the number of interrogatories served, including subparts, exceeds the limit specified in 37 C.F.R. § 2.120(d)(1).

Perry IP Group ALC  
E. Lynn Perry  
4 Embarcadero Center, 39th Floor  
San Francisco, CA 94111  
Telephone: (415) 398-6300

Harvey Siskind LLP  
Raffi V. Zerounian  
Four Embarcadero Center, 39th Floor  
San Francisco, CA 94111  
Telephone: (415) 354-0100  
Facsimile: (415) 391-7124

Dated: May 15, 2008

  
\_\_\_\_\_  
Raffi V. Zerounian

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing:

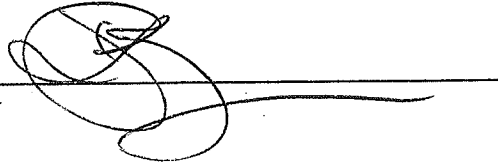
PETITIONER'S GENERAL OBJECTION TO REGISTRANT'S FIRST SET OF  
INTERROGATORIES

was served by delivering a true and correct copy of same via First Class Mail on the date  
indicated below, upon the following:

Frederick W. Meyers  
Amanda M. Roach  
Ladas & Parry LLP  
224 S. Michigan Avenue  
Suite 1600  
Chicago, IL 60604

May 16, 2008

Linda Penry

A handwritten signature in black ink, appearing to be 'Linda Penry', is written over a horizontal line. The signature is stylized with loops and a long horizontal stroke extending to the right.



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

FRESH EXPRESS INCORPORATED,

Petitioner,

v.

SUPREME OIL COMPANY,

Registrant.

Cancellation No.: 92047162

Reg. No. 1,758,520

Issued: March 16, 1993

Mark: SALAD BAR

**PETITIONER'S RESPONSES TO  
REGISTRANT'S FIRST SET OF  
REQUESTS FOR DOCUMENTS AND  
TANGIBLE THINGS**

PROPOUNDING PARTY: Registrant Supreme Oil Company

RESPONDING PARTY: Petitioner Fresh Express Incorporated

SET NUMBER: One

Pursuant to Rule 34 of the Federal Rules of Civil Procedure, Petitioner Fresh Express Incorporated. ("Fresh Express" or "Petitioner") responds to Supreme Oil Company's ("Supreme Oil" or "Registrant") First Set of Requests for Production ("Requests") as follows:

Petitioner, based upon its current knowledge, understanding, and belief of the facts, information and documents available to it, responds as set forth below. As this action proceeds,

Petitioner may discover further responsive documents. Petitioner reserves the right to modify or supplement these responses accordingly.

These responses are given without prejudice to using or relying on at trial documents omitted from these responses as a result of mistake, error, oversight, or inadvertence. Petitioner further reserves the right to object on appropriate grounds to the introduction at trial of any information or documents included in these responses.

Petitioner's responses and objections are made without waiving or intending to waive, but on the contrary, preserving and intending to preserve, all objections as to competency, relevancy, materiality, privilege, and admissibility as evidence for any purpose of the responses, or the subject matter thereof, in this or any subsequent proceeding.

#### **GENERAL OBJECTIONS**

Petitioner objects to all Requests for production of documents on the following grounds, each of which is hereby incorporated by reference into Petitioner's individual responses below as if fully stated therein.

1. Petitioner objects to the Requests to the extent that they seek to impose duties or obligations on Petitioner beyond those imposed by the Federal Rules of Civil Procedure or the applicable Rules of Practice of the United States Trademark Office.

2. Petitioner objects to each of the Requests to the extent that it seeks information which is protected by the attorney-client privilege, or which consists of attorney work product, or which is otherwise protected from disclosure. Any inadvertent production of any privileged or protected document will not constitute a waiver of any privilege or protection. Petitioner will produce such privilege log as may be required by applicable law in connection with its document production.

3. Petitioner objects to each of the Requests for production of documents to the extent that it seeks information which consists of proprietary business information or other

confidential information. Petitioner will not produce any such information until an appropriate mutually agreed upon protective order has been entered by the Court.

4. Petitioner objects to each of the Requests on the grounds and to the extent that it is unduly burdensome and overly broad and thus, in part, is designed to burden, harass, annoy, and oppress Petitioner rather than to serve any legitimate discovery purpose. Where the request is overbroad, Petitioner will initially produce a representative sample of requested documents or will produce summary information in lieu of individual documents. After the produced documents are reviewed, Petitioner will meet and confer regarding production for inspection of any additional documents specifically requested by Registrant. Overbreadth is also evident to the extent that electronic information is called for and responsive. The electronic storage media contains voluminous data irrelevant to the issues in this case. After the produced documents are reviewed, Petitioner will meet and confer with Registrant and will produce electronic information reasonably requested and specifically identified by Registrant.

5. Petitioner objects to each of the Requests on the grounds and to the extent that it seeks to require Petitioner to produce documents which in large part and measure are neither relevant to the subject matter of this action, nor reasonably calculated to lead to the discovery of admissible evidence.

6. Petitioner objects each of the Requests to the extent it seeks documents or information not in the possession, custody, or control of Petitioner.

7. Petitioner objects to each of the Requests to the extent it seeks documents or information obtainable from some other source that is more convenient, less burdensome, or less expensive.

8. Petitioner objects to each of the Requests to the extent it contains repetitive or overlapping requests.

9. Petitioner objects to each of the Requests to the extent it does not set forth and describe individual items and categories with reasonable particularity or is otherwise unclear, vague, ambiguous, or unintelligible. By serving this Response, Petitioner is not admitting that there are documents or information responsive to this Request.

10. Petitioner objects to each of the Requests insofar as it is intended to limit or restrict Petitioner's right to rely on any documents, information, or witness for any purpose whatsoever in this proceeding before discovery is completed. Petitioner's objections and responses set forth the information and facts presently known to Petitioner. Further discovery may develop additional information affecting the responses to these Requests. Petitioner reserves the right to amend or supplement its responses as additional information and documents are identified, facts are ascertained, analyses are made, and trial preparation, discovery, investigation, and legal research are completed. Petitioner will supplement the responses only to the extent required by the Federal Rules of Civil Procedure or the applicable Rules of Practice of the United States Trademark Office. These responses are not intended to limit Petitioner's use of additional information that Petitioner may subsequently obtain during the course of discovery and further investigation.

11. Petitioner reserves all objections to the relevancy, materiality or admissibility of any document so produced as evidence for any purpose in any further proceedings in this action, including motions for summary judgment, motions for summary adjudication of issues, and the trial of this action, or in any other action.

12. In responding to these Requests, identification of any document by Petitioner shall not constitute an agreement with or a concession as to the veracity of the document, or as to any characterization of the document in these responses. Petitioner expressly reserves the right to assert any and all appropriate objections with respect to any such document.

13. Petitioner incorporates these General Objections into Petitioner's responses to each specific request. Petitioner's responses are made without waiver of, or prejudice to, these or any additional objections that the Petitioner may make. All such objections are hereby reserved, as is the right to move for a protective order.

14. Petitioner objects to the time, place, and manner of the document production set forth in the Requests. Petitioner will initially produce a representative sample of requested documents or will produce summary information in lieu of individual documents. After the produced documents are reviewed, Petitioner will meet and confer regarding production for inspection of any additional documents requested by Registrant. Moreover, the fact that Petitioner agrees to produce documents in a certain request shall not be interpreted to be an admission or inference that any such documents exist or that Petitioner has any such documents in its possession, custody, or control.

15. Petitioner objects to Registrant's request for production of documents to the extent it calls for the production of documents created after the date of the filing of this action, on the grounds that such requests are overly broad, beyond the scope of the cancellation proceeding and not reasonably calculated to lead to the discovery of admissible evidence.

16. Petitioner objects to Registrant's definition of the terms "YOU," "YOUR," and "PETITIONER" on the grounds that they are overbroad, unduly burdensome, oppressive, harassing, vague and ambiguous, and improperly seek information that is not within Petitioner's possession, custody or control.

17. Petitioner objects to each request to the extent that it seeks documents that contain confidential and private information of a third party, including but not limited to personal information of Petitioner's employees, that is not relevant to the issues in this case.

18. Petitioner objects to each request as overbroad, unduly burdensome, and seeking documents that are neither relevant to the subject matter of this litigation nor reasonably

calculated to lead to the discovery of admissible evidence to the extent the request seeks documents remote in time and not relevant to this litigation.

19. Petitioner objects to the entire set of requests for production on the ground that it is overly broad and burdensome to the extent that it fails to describe or include a time period covered by the requests.

### **SPECIFIC RESPONSES AND FURTHER OBJECTIONS**

Petitioner adopts and incorporates by reference each of the foregoing General Objections as though fully set forth below as separate objections to each Request. Petitioner further objects and responds as follows:

#### **REQUEST NO. 1:**

Representative documents showing all the different goods, of each kind, mode or style on which the Petitioner's mark is used, has been used, or has been proposed to be used.

#### **RESPONSE TO REQUEST FOR DOCUMENTS NO. 1:**

Petitioner objects to this document request on the ground that it seeks documents that are not relevant to a claim or defense of any party in this proceeding, and it is not reasonably calculated to lead to the discovery of admissible evidence. Petitioner further objects to this request on the ground that it is overbroad, oppressive, and unduly burdensome. Subject to and in accordance with these objections and the General Objections set forth above and incorporated by reference as though fully set forth herein, Petitioner responds as follows: Petitioner will produce non-privileged documents responsive to this request, if any exist, subject to an appropriate protective order once one is in place, if applicable. Petitioner is not presently aware of any such documents.

#### **REQUEST NO. 2:**

Documents and things sufficient to determine Petitioner's corporate structure.

**RESPONSE TO REQUEST FOR DOCUMENTS NO. 2:**

Petitioner's General Objections set forth above are incorporated by reference as though fully set forth herein. Petitioner objects to this document request on the ground that it seeks documents that are not relevant to a claim or defense of any party in this proceeding, and it is not reasonably calculated to lead to the discovery of admissible evidence.

**REQUEST NO. 3:**

Documents and things sufficient to determine each of Petitioner's principal places of business.

**RESPONSE TO REQUEST FOR DOCUMENTS NO. 3:**

Subject to and in accordance with the General Objections set forth above and incorporated by reference as though fully set forth herein, Petitioner responds as follows: Petitioner will produce non-privileged documents responsive to this request, if any exist, subject to an appropriate protective order once one is in place, if applicable.

**REQUEST NO. 4:**

Documents and things sufficient to determine the principal places of business of each parent, subsidiary or affiliate of Petitioner.

**RESPONSE TO REQUEST FOR DOCUMENTS NO. 4:**

Petitioner's General Objections set forth above are incorporated by reference as though fully set forth herein. Petitioner objects to this document request on the ground that it seeks documents that are not relevant to a claim or defense of any party in this proceeding, and it is not reasonably calculated to lead to the discovery of admissible evidence.

**REQUEST NO. 5:**

All documents and things that relate to any marks considered in connection with Petitioner's selection of Petitioner's mark.

**RESPONSE TO REQUEST FOR DOCUMENTS NO. 5:**

Petitioner's General Objections set forth above are incorporated by reference as though fully set forth herein. Petitioner objects to this document request on the ground that it seeks documents that are not relevant to a claim or defense of any party in this proceeding, and it is not reasonably calculated to lead to the discovery of admissible evidence. Petitioner further objects to this request on the ground that it is overbroad, oppressive, and unduly burdensome. Petitioner also objects to this request on the basis that it is vague and unintelligible to the extent that the phrase "marks considered in connection with" does not refer to Petitioner's mark. Petitioner also objects to this request to the extent that it seeks confidential communications and/or information protected by the attorney-client privilege and work product doctrine.

**REQUEST NO. 6:**

All documents and things that relate to any trademark searches performed in connection with Petitioner's use or proposed use of Petitioner's mark.

**RESPONSE TO REQUEST FOR DOCUMENTS NO. 6:**

Petitioner objects to this document request on the ground that it seeks documents that are not relevant to a claim or defense of any party in this proceeding, and it is not reasonably calculated to lead to the discovery of admissible evidence. Petitioner further objects to this request on the ground that it is overbroad, oppressive, and unduly burdensome. Petitioner also objects to this request to the extent that it seeks confidential communications and/or information protected by the attorney-client privilege and work product doctrine. Petitioner further objects on the grounds that this request is unreasonably cumulative and duplicative as it seeks documents previously requested in Request No. 5. Subject to and in accordance with the General Objections set forth above and incorporated by reference as though fully set forth herein, Petitioner responds as follows: Petitioner will produce non-



privileged documents responsive to this request, if any exist, subject to an appropriate protective order once one is in place, if applicable.

**REQUEST NO. 7:**

All documents and things that relate to opinions as to the availability of Petitioner's mark for use as a trademark in connection with Petitioner's goods or services.

**RESPONSE TO REQUEST FOR DOCUMENTS NO. 7:**

Petitioner's General Objections set forth above are incorporated by reference as though fully set forth herein. Petitioner objects to this document request on the ground that it seeks documents that are not relevant to a claim or defense of any party in this proceeding, and it is not reasonably calculated to lead to the discovery of admissible evidence. Petitioner further objects to this request on the ground that it is overbroad, oppressive, and unduly burdensome. Petitioner also objects to this request to the extent that it seeks confidential communications and/or information protected by the attorney-client privilege and work product doctrine. Petitioner further objects on the grounds that this request is unreasonably cumulative and duplicative as it seeks documents previously requested in Request Nos. 5 and 6.

**REQUEST NO. 8:**

All documents and things relating to searches of Petitioner's mark considered for use in connection with each of Petitioner's goods or services.

**RESPONSE TO REQUEST FOR DOCUMENTS NO. 8:**

Petitioner's General Objections set forth above are incorporated by reference as though fully set forth herein. Petitioner objects to this request because the phrase "searches of Petitioner's mark" is ambiguous and unintelligible. Petitioner objects to this document request on the ground that it seeks documents that are not relevant to a claim or defense of any party in this proceeding, and it is not reasonably calculated to lead to the discovery of admissible evidence. Petitioner further objects to this request on the ground that it is overbroad, oppressive, and unduly burdensome. Petitioner also objects to this request to the extent that it seeks

confidential communications and/or information protected by the attorney-client privilege and work product doctrine. Petitioner further objects on the grounds that this request is unreasonably cumulative and duplicative as it seeks documents previously requested in Request Nos. 5, 6, and 7.

**REQUEST NO. 9:**

All documents and things relating to the selection or adoption of Petitioner's mark.

**RESPONSE TO REQUEST FOR DOCUMENTS NO. 9:**

Petitioner's General Objections set forth above are incorporated by reference as though fully set forth herein. Petitioner objects to this document request on the ground that it seeks documents that are not relevant to a claim or defense of any party in this proceeding, and it is not reasonably calculated to lead to the discovery of admissible evidence. Petitioner further objects to this request on the ground that it is overbroad, oppressive, and unduly burdensome. Petitioner also objects to this request to the extent that it seeks confidential communications and/or information protected by the attorney-client privilege and work product doctrine. Petitioner further objects on the grounds that this request is unreasonably cumulative and duplicative as it seeks documents previously requested in Request Nos. 5, 6, 7, and 8.

**REQUEST NO. 10:**

All documents and things relating to the first use in or to the United States of America of Petitioner's mark in connection with each of the Petitioner's goods or services on which the mark is used.

**RESPONSE TO REQUEST FOR DOCUMENTS NO. 10:**

Petitioner objects to this request because the phrase "first use in or to the United States" is ambiguous and unintelligible. Petitioner objects to this document request on the ground that it seeks documents that are not relevant to a claim or defense of any party in this proceeding, and it is not reasonably calculated to lead to the discovery of admissible evidence. Petitioner further

objects to this request on the ground that it is overbroad, oppressive, and unduly burdensome. Petitioner further objects on the grounds that this request is unreasonably cumulative and duplicative as it seeks documents previously requested in Request No. 1. Subject to and in accordance with these objections and the General Objections set forth above and incorporated by reference as though fully set forth herein, Petitioner responds as follows: Petitioner will produce non-privileged documents responsive to this request, if any exist, subject to an appropriate protective order once one is in place, if applicable. Petitioner is not presently aware of any such documents.

**REQUEST NO. 11:**

All documents and things that relate to any state or United States Federal application to register any trademark, service mark or trade name that includes Petitioner's mark or any similar marks, including, but not limited to all File Wrappers and Contents thereof pertaining to any applications.

**RESPONSE TO REQUEST FOR DOCUMENTS NO. 11:**

Petitioner objects to this request because the phrase "any trademark, service mark or trade name that includes Petitioner's mark or any similar marks" is ambiguous and unintelligible. Petitioner objects to this document request on the ground that it seeks documents that are not relevant to a claim or defense of any party in this proceeding, and it is not reasonably calculated to lead to the discovery of admissible evidence. Petitioner further objects to this request on the ground that it is overbroad, oppressive, and unduly burdensome. Petitioner also objects to this request to the extent that it seeks confidential communications and/or information protected by the attorney-client privilege and work product doctrine. Petitioner further objects to the document request to the extent that Registrant seeks information where the burden of deriving or ascertaining the answers thereto is substantially the same for Petitioner as for Registrant. Subject to and in accordance with the General Objections set forth above and incorporated by reference as though fully set forth herein, Petitioner responds as follows:

Petitioner will produce non-privileged documents responsive to this request, if any exist, subject to an appropriate protective order once one is in place, if applicable.

**REQUEST NO. 12:**

All documents and things that relate to any contacts by Petitioner with the United States Patent and Trademark Office relating to Registrant's mark or to Petitioner's mark or any of Petitioner's applications to register Petitioner's mark.

**RESPONSE TO REQUEST FOR DOCUMENTS NO. 12:**

Petitioner's General Objections set forth above are incorporated by reference as though fully set forth herein. Petitioner objects to this document request on the ground that it seeks documents that are not relevant to a claim or defense of any party in this proceeding, and it is not reasonably calculated to lead to the discovery of admissible evidence. Petitioner further objects to this request on the ground that it is overbroad, oppressive, and unduly burdensome. Petitioner also objects to this request to the extent that it seeks confidential communications and/or information protected by the attorney-client privilege and work product doctrine. Petitioner further objects to the document request to the extent that Registrant seeks information where the burden of deriving or ascertaining the answers thereto is substantially the same for Petitioner as for Registrant. Petitioner further objects on the grounds that this request is unreasonably cumulative and duplicative as it seeks documents previously requested in Request No. 11.

**REQUEST NO. 13:**

A sample of each different product or service bearing Petitioner's mark that is or has been advertised, offered for sale, sold or distributed by Petitioner, including but not limited to all packages packaged within Petitioner's primary packaging, if any.

**RESPONSE TO REQUEST FOR DOCUMENTS NO. 13:**

Petitioner objects to this request because the phrase "[a] sample of each different . . . service . . . ." is ambiguous and unintelligible. Petitioner also objects to this document request on

the ground that it seeks documents that are not relevant to a claim or defense of any party in this proceeding, and it is not reasonably calculated to lead to the discovery of admissible evidence. Petitioner further objects to this request on the ground that it is overbroad, oppressive, and unduly burdensome. Petitioner further objects on the grounds that this request is unreasonably cumulative and duplicative as it seeks documents previously requested in Request No. 1. Subject to and in accordance with these objections and the General Objections set forth above and incorporated by reference as though fully set forth herein, Petitioner responds as follows: Petitioner will produce non-privileged documents responsive to this request, if any exist, subject to an appropriate protective order once one is in place, if applicable. Petitioner is not presently aware of any such documents.

**REQUEST NO. 14:**

Representative specimens of each label, tag, placard, insert, stamp, packaging material, container, point of sale display and the like, on which Petitioner's mark is, or at any time has been used, or has been proposed to be used.

**RESPONSE TO REQUEST FOR DOCUMENTS NO. 14:**

Petitioner objects to this document request on the ground that it seeks documents that are not relevant to a claim or defense of any party in this proceeding, and it is not reasonably calculated to lead to the discovery of admissible evidence. Petitioner further objects on the grounds that this request is unreasonably cumulative and duplicative as it seeks documents previously requested in Request Nos. 1 and 13. Subject to and in accordance with these objections and the General Objections set forth above and incorporated by reference as though fully set forth herein, Petitioner responds as follows: Petitioner will produce non-privileged documents responsive to this request, if any exist, subject to an appropriate protective order once one is in place, if applicable. Petitioner is not presently aware of any such documents.

**REQUEST NO. 15:**

Representative specimens of catalogs, mailing pieces, brochures, handbills, flyers, offerings, and other pieces of descriptive or promotional literature, directed at potential (or actual) customers, and relating to or describing products or services identified by Petitioner's mark.

**RESPONSE TO REQUEST FOR DOCUMENTS NO. 15:**

Petitioner objects to this document request on the ground that it seeks documents that are not relevant to a claim or defense of any party in this proceeding, and it is not reasonably calculated to lead to the discovery of admissible evidence. Petitioner further objects on the grounds that this request is unreasonably cumulative and duplicative as it seeks documents previously requested in Request No. 1. Subject to and in accordance with these objections and the General Objections set forth above and incorporated by reference as though fully set forth herein, Petitioner responds as follows: Petitioner will produce non-privileged documents responsive to this request, if any exist, subject to an appropriate protective order once one is in place, if applicable. Petitioner is not presently aware of any such documents.

**REQUEST NO. 16:**

Representative documents and things relating to the use or proposed use of Petitioner's mark in connection with the specific products identified in any Federal Trademark application of the Cancellation Petition.

**RESPONSE TO REQUEST FOR DOCUMENTS NO. 16:**

Petitioner's General Objections set forth above are incorporated by reference as though fully set forth herein. Petitioner objects to this document request on the ground that it seeks documents that are not relevant to a claim or defense of any party in this proceeding, and it is not reasonably calculated to lead to the discovery of admissible evidence. Petitioner further objects on the grounds that this request is unreasonably cumulative and duplicative as it seeks

documents previously requested in Request Nos. 1, 13, 14 and 15. Petitioner further objects to this request on the ground that it is overbroad, oppressive, and unduly burdensome.

**REQUEST NO. 17:**

All documents and things that relate to any investigation, market survey or other research regarding the use or proposed use of Petitioner's mark in connection with the sale of Petitioner's goods or services in or to the United States of America.

**RESPONSE TO REQUEST FOR DOCUMENTS NO. 17:**

Petitioner's General Objections set forth above are incorporated by reference as though fully set forth herein. Petitioner objects to this document request on the ground that it seeks documents that are not relevant to a claim or defense of any party in this proceeding, and it is not reasonably calculated to lead to the discovery of admissible evidence. Petitioner further objects to this request on the ground that it is overbroad, oppressive, and unduly burdensome. Petitioner also objects to this request to the extent that it seeks confidential communications and/or information protected by the attorney-client privilege and work product doctrine. Moreover, Petitioner objects to this request to the extent that it calls for the production of confidential business information, trade secrets, or commercially sensitive information of Petitioner.

**REQUEST NO. 18:**

All formal or informal surveys or polls, studies, research or tests and all documents relating to such surveys, polls, studies, research, or tests which were conducted by or on behalf of Petitioner relating to Petitioner's mark.

**RESPONSE TO REQUEST FOR DOCUMENTS NO. 18:**

Petitioner's General Objections set forth above are incorporated by reference as though fully set forth herein. Petitioner objects to this document request on the ground that it seeks documents that are not relevant to a claim or defense of any party in this proceeding, and it is not reasonably calculated to lead to the discovery of admissible evidence. Petitioner further

objects to this request on the ground that it is overbroad, oppressive, and unduly burdensome. Petitioner also objects to this request to the extent that it seeks confidential communications and/or information protected by the attorney-client privilege and work product doctrine. Moreover, Petitioner objects to this request to the extent that it calls for the production of confidential business information, trade secrets, or commercially sensitive information of Petitioner. Petitioner further objects on the grounds that this request is unreasonably cumulative and duplicative as it seeks documents previously requested in Request No. 17.

**REQUEST NO. 19:**

All documents which refer to or relate to Registrant and/or Registrant's mark.

**RESPONSE TO REQUEST FOR DOCUMENTS NO. 19:**

Petitioner objects to this request on the ground that it is overbroad, oppressive, and unduly burdensome. Petitioner also objects to this request to the extent that it seeks confidential communications and/or information protected by the attorney-client privilege and work product doctrine. Subject to and in accordance with these objections and the General Objections set forth above and incorporated by reference as though fully set forth herein, Petitioner responds as follows: Petitioner will produce non-privileged documents responsive to this request, if any exist, subject to an appropriate protective order once one is in place, if applicable.

**REQUEST NO. 20:**

All license agreements or other agreements relating to use of the Petitioner's mark.

**RESPONSE TO REQUEST FOR DOCUMENTS NO. 20:**

Petitioner objects to this document request on the ground that it seeks documents that are not relevant to a claim or defense of any party in this proceeding, and it is not reasonably calculated to lead to the discovery of admissible evidence. Subject to and in accordance with these objections and the General Objections set forth above and incorporated by reference as



though fully set forth herein, Petitioner responds as follows: Petitioner will produce non-privileged documents responsive to this request, if any exist, subject to an appropriate protective order once one is in place, if applicable.

**REQUEST NO. 21:**

Specimens showing the current use of the Petitioner's mark for each product identified in the registration asserted by Petitioner and for any goods or services where the Petitioner claims it uses the mark.

**RESPONSE TO REQUEST FOR DOCUMENTS NO. 21:**

Petitioner objects to this request because the phrase "registration asserted by Petitioner" is ambiguous and unintelligible as Petitioner has not asserted any registration in this Cancellation proceeding. Petitioner also objects to this document request on the ground that it seeks documents that are not relevant to a claim or defense of any party in this proceeding, and it is not reasonably calculated to lead to the discovery of admissible evidence. Petitioner further objects to this request on the ground that it is overbroad, oppressive, and unduly burdensome. Petitioner further objects on the grounds that this request is unreasonably cumulative and duplicative as it seeks documents previously requested in Request Nos. 1, 13, 14, and 15. Subject to and in accordance with the General Objections set forth above and incorporated by reference as though fully set forth herein, Petitioner responds as follows: Petitioner is not presently aware of any such documents.

**REQUEST NO. 22:**

Representative specimens of all advertising documents and promotional materials, including, but not limited to, catalogs, circulars, leaflets, direct mail pieces, newspaper and magazine advertisements, ad slicks, sale presentation materials, publicity releases and telephone book advertisements bearing the Petitioner's mark.

**RESPONSE TO REQUEST FOR DOCUMENTS NO. 22:**

Petitioner's General Objections set forth above are incorporated by reference as though fully set forth herein. Petitioner also objects to this document request on the ground that it seeks documents that are not relevant to a claim or defense of any party in this proceeding, and it is not reasonably calculated to lead to the discovery of admissible evidence. Petitioner further objects on the grounds that this request is unreasonably cumulative and duplicative as it seeks documents previously requested in Request No. 15. Petitioner further objects to this request on the ground that it is overbroad, oppressive, and unduly burdensome.

**REQUEST NO. 23:**

All documents including, but not limited to, records, memoranda, and correspondence pertaining to the creation, selection, searching, adoption, and earliest use of the Petitioner's mark by or with Petitioner or by any person acting or purporting to act for or on behalf of Petitioner, including all correspondence with design firms, advertising agencies, advertising media and suppliers.

**RESPONSE TO REQUEST FOR DOCUMENTS NO. 23:**

Petitioner's General Objections set forth above are incorporated by reference as though fully set forth herein. Petitioner also objects to this document request on the ground that it seeks documents that are not relevant to a claim or defense of any party in this proceeding, and it is not reasonably calculated to lead to the discovery of admissible evidence. Petitioner further objects to this request on the ground that it is overbroad, oppressive, and unduly burdensome. Petitioner objects to this request to the extent that it calls for the production of confidential business information, trade secrets, or commercially sensitive information of Petitioner. Petitioner further objects on the grounds that this request is unreasonably cumulative and duplicative as it seeks documents previously requested in Request Nos. 5, 6, and 10.

**REQUEST NO. 24:**

All documents including, but not limited to, records, memoranda, and correspondence relating to statements, inquiries, comments or other communications by or from Petitioner's customers, suppliers or other third parties, either written or oral, evidencing any confusion, suspicion, belief or doubt on the part of such customer, supplier or other third party, or lack thereof, as to the relationship between the marks of Petitioner and those of the Registrant.

**RESPONSE TO REQUEST FOR DOCUMENTS NO. 24:**

Petitioner also objects to this document request on the ground that it seeks documents that are not relevant to a claim or defense of any party in this proceeding, and it is not reasonably calculated to lead to the discovery of admissible evidence. Petitioner further objects to this request on the ground that it is overbroad, oppressive, and unduly burdensome. Subject to and in accordance with these objections and the General Objections set forth above and incorporated by reference as though fully set forth herein, Petitioner responds as follows: Petitioner will produce non-privileged documents responsive to this request, if any exist.

**REQUEST NO. 25:**

All documents including, but not limited to, records, memoranda, correspondence, and notes relating to Petitioner's knowledge of Registrant's Federal Trademark Registration Application for the Registrant's mark.

**RESPONSE TO REQUEST FOR DOCUMENTS NO. 25:**

Petitioner objects to this document request on the ground that it seeks documents that are not relevant to a claim or defense of any party in this proceeding, and it is not reasonably calculated to lead to the discovery of admissible evidence. Petitioner further objects to this request on the ground that it is overbroad, oppressive, and unduly burdensome. Petitioner also objects to the document request to the extent that Registrant seeks information where the burden of deriving or ascertaining the answers thereto is substantially the same for Petitioner as for Registrant. Subject to and in accordance with these objections and the General Objections set

forth above and incorporated by reference as though fully set forth herein, Petitioner responds as follows: Petitioner will produce non-privileged documents responsive to this request, if any exist, subject to an appropriate protective order once one is in place, if applicable. Petitioner is not presently aware of any such documents that are not privileged.

**REQUEST NO. 26:**

All documents describing or illustrating the organization and structure of Petitioner, at present or during the past five years including, but not limited to, organizational charts, job descriptions, and maps and locations of sales offices or distribution centers or manufacturing facilities.

**RESPONSE TO REQUEST FOR DOCUMENTS NO. 26:**

Petitioner's General Objections set forth above are incorporated by reference as though fully set forth herein. Petitioner also objects to this request on the ground that it is overbroad, oppressive, and unduly burdensome. Petitioner further objects on the grounds that this request is unreasonably cumulative and duplicative as it seeks documents previously requested in Request No. 2. Petitioner also objects to this document request on the ground that it seeks documents that are not relevant to a claim or defense of any party in this proceeding, and it is not reasonably calculated to lead to the discovery of admissible evidence.

**REQUEST NO. 27:**

Documents describing or illustrating the past or present lines of distribution for any product manufactured, sold or distributed by Petitioner or by any person acting or purporting to act for or on behalf of Petitioner, bearing Petitioner's mark.

**RESPONSE TO REQUEST FOR DOCUMENTS NO. 27:**

Petitioner's General Objections set forth above are incorporated by reference as though fully set forth herein. Petitioner objects to this document request on the ground that it seeks documents that are not relevant to a claim or defense of any party in this proceeding, and it is not reasonably calculated to lead to the discovery of admissible evidence. Petitioner objects to

this request to the extent that it calls for the production of confidential business information, trade secrets, or commercially sensitive information of Petitioner. Petitioner further objects to this request on the ground that it is overbroad, oppressive, and unduly burdensome.

**REQUEST NO. 28:**

All documents relating to any periodic reports on market conditions, including market share data, for any product bearing Petitioner's mark.

**RESPONSE TO REQUEST FOR DOCUMENTS NO. 28:**

Petitioner's General Objections set forth above are incorporated by reference as though fully set forth herein. Petitioner objects to this document request on the ground that it seeks documents that are not relevant to a claim or defense of any party in this proceeding, and it is not reasonably calculated to lead to the discovery of admissible evidence. Petitioner objects to this request to the extent that it calls for the production of confidential business information, trade secrets, or commercially sensitive information of Petitioner. Petitioner further objects to this request on the ground that it is overbroad, oppressive, and unduly burdensome.

**REQUEST NO. 29:**

All documents for Petitioner's mark showing Petitioner's codes or numbering systems for identifying Petitioner's products from sales documents, invoices and periodic sales reports.

**RESPONSE TO REQUEST FOR DOCUMENTS NO. 29:**

Petitioner's General Objections set forth above are incorporated by reference as though fully set forth herein. Petitioner objects to this document request on the ground that it seeks documents that are not relevant to a claim or defense of any party in this proceeding, and it is not reasonably calculated to lead to the discovery of admissible evidence. Petitioner objects to this request to the extent that it calls for the production of confidential business information, trade secrets, or commercially sensitive information of Petitioner. Petitioner further objects to this request on the ground that it is overbroad, oppressive, and unduly burdensome.

**REQUEST NO. 30:**

All documents which refer or relate to the U.S. volume of goods or services sold by mark and product type on a quarterly and yearly basis in both unit sales and dollar volume for each product or service and each type of product or service bearing the Petitioner's mark.

**RESPONSE TO REQUEST FOR DOCUMENTS NO. 30:**

Petitioner's General Objections set forth above are incorporated by reference as though fully set forth herein. Petitioner objects to this document request on the ground that it seeks documents that are not relevant to a claim or defense of any party in this proceeding, and it is not reasonably calculated to lead to the discovery of admissible evidence. Petitioner objects to this request to the extent that it calls for the production of confidential business information, trade secrets, or commercially sensitive information of Petitioner. Petitioner further objects to this request on the ground that it is overbroad, oppressive, and unduly burdensome.

**REQUEST NO. 31:**

All documents and things relating to the types of U.S. customers that buy, receive or use Petitioner's goods or services that show the Petitioner's mark.

**RESPONSE TO REQUEST FOR DOCUMENTS NO. 31:**

Petitioner's General Objections set forth above are incorporated by reference as though fully set forth herein. Petitioner objects to this document request on the ground that it seeks documents that are not relevant to a claim or defense of any party in this proceeding, and it is not reasonably calculated to lead to the discovery of admissible evidence. Petitioner objects to this request to the extent that it calls for the production of confidential business information, trade secrets, or commercially sensitive information of Petitioner. Petitioner further objects to this request on the ground that it is overbroad, oppressive, and unduly burdensome.

**REQUEST NO. 32:**

All documents and things relating to any discontinuance of use of Petitioner's mark on any products or services in the U.S.

**RESPONSE TO REQUEST FOR DOCUMENTS NO. 32:**

Petitioner objects to this document request on the ground that it seeks documents that are not relevant to a claim or defense of any party in this proceeding, and it is not reasonably calculated to lead to the discovery of admissible evidence. Petitioner objects to this request to the extent that it calls for the production of confidential business information, trade secrets, or commercially sensitive information of Petitioner. Petitioner further objects to this request on the ground that it is overbroad, oppressive, and unduly burdensome. Subject to and in accordance with these objections and the General Objections set forth above and incorporated by reference as though fully set forth herein, Petitioner responds as follows: Petitioner will produce non-privileged documents responsive to this request, if any exist, subject to an appropriate protective order once one is in place, if applicable. Petitioner is not presently aware of any such documents.

**REQUEST NO. 33:**

All documents and things relating to a likelihood of confusion of Petitioner's mark with any other mark.

**RESPONSE TO REQUEST FOR DOCUMENTS NO. 33:**

Petitioner's General Objections set forth above are incorporated by reference as though fully set forth herein. Petitioner objects to this document request on the ground that it seeks documents that are not relevant to a claim or defense of any party in this proceeding, and it is not reasonably calculated to lead to the discovery of admissible evidence. Petitioner further objects to this request on the ground that it is overbroad, oppressive, and unduly burdensome. Petitioner further objects on the grounds that this request is unreasonably cumulative and duplicative as it seeks documents previously requested in Request No. 24.

**REQUEST NO. 34:**

All documents and things relating to any mail, telephone calls, complaints, inquiries or orders regarding the Registrant or Registrant's marks, goods, services or the business activities of the Registrant.

**RESPONSE TO REQUEST FOR DOCUMENTS NO. 34:**

Petitioner objects to this request on the ground that it is overbroad, oppressive, and unduly burdensome. Petitioner further objects on the grounds that this request is unreasonably cumulative and duplicative as it seeks documents previously requested in Request No. 33. Petitioner also objects to this request to the extent that it seeks confidential communications and/or information protected by the attorney-client privilege and work product doctrine. Subject to and in accordance with these objections and the General Objections set forth above and incorporated by reference as though fully set forth herein, Petitioner responds as follows: Petitioner will produce non-privileged documents responsive to this request, if any exist, subject to an appropriate protective order once one is in place, if applicable. Petitioner is not presently aware of any such documents.

**REQUEST NO. 35:**

All documents and things relating to any communications intended for Registrant.

**RESPONSE TO REQUEST FOR DOCUMENTS NO. 35:**

Petitioner objects to this request on the ground that it is overbroad, oppressive, and unduly burdensome. Petitioner also objects to this request to the extent that it seeks confidential communications and/or information protected by the attorney-client privilege and work product doctrine. Subject to and in accordance with these objections and the General Objections set forth above and incorporated by reference as though fully set forth herein, Petitioner responds as follows: Petitioner interprets this request to mean communications received by Petitioner, and will produce non-privileged documents responsive to this request, if



any exist, subject to an appropriate protective order once one is in place, if applicable. Petitioner is not presently aware of any such documents.

**REQUEST NO. 36:**

All documents and things relating to any communications where the communicator believed that Registrant or Registrant's marks, goods and services were in some way connected with Petitioner's mark, goods or the business of the Petitioner.

**RESPONSE TO REQUEST FOR DOCUMENTS NO. 36:**

Petitioner objects to this request on the ground that it is overbroad, oppressive, and unduly burdensome. Petitioner further objects on the grounds that this request is unreasonably cumulative and duplicative as it seeks documents previously requested in Request No. 35. Petitioner also objects to this request to the extent that it seeks confidential communications and/or information protected by the attorney-client privilege and work product doctrine. Subject to and in accordance with these objections and the General Objections set forth above and incorporated by reference as though fully set forth herein, Petitioner responds as follows: Petitioner will produce non-privileged documents responsive to this request, if any exist, subject to an appropriate protective order once one is in place, if applicable. Petitioner is not presently aware of any such documents.

**REQUEST NO. 37:**

All documents and things that relate to any deliberation by Petitioner as to whether Petitioner's mark should be modified or whether the use of Petitioner's mark should be discontinued, reduced or expanded.

**RESPONSE TO REQUEST FOR DOCUMENTS NO. 37:**

Petitioner objects to this request because the phrase "any deliberation by Petitioner as to whether Petitioner's mark should be modified or whether the use of Petitioner's mark should be discontinued, reduced or expanded" is ambiguous and unintelligible. Petitioner also objects to this document request on the ground that it seeks documents that are not relevant to a claim or

defense of any party in this proceeding, and it is not reasonably calculated to lead to the discovery of admissible evidence. Moreover, Petitioner objects to this request to the extent that it calls for the production of confidential business information, trade secrets, or commercially sensitive information of Petitioner. Petitioner further objects to this request on the ground that it is overbroad, oppressive, and unduly burdensome. Subject to and in accordance with these objections and the General Objections set forth above and incorporated by reference as though fully set forth herein, Petitioner responds as follows: Petitioner will produce non-privileged documents responsive to this request, if any exist, subject to an appropriate protective order once one is in place, if applicable. Petitioner is not presently aware of any such documents.

**REQUEST NO. 38:**

All documents and things that relate to Petitioner's first awareness of Registrant's mark.

**RESPONSE TO REQUEST FOR DOCUMENTS NO. 38:**

Petitioner objects to this document request on the ground that it seeks documents that are not relevant to a claim or defense of any party in this proceeding, and it is not reasonably calculated to lead to the discovery of admissible evidence. Petitioner objects to this request on the ground that it is overbroad, oppressive, and unduly burdensome. Petitioner also objects to this request to the extent that it seeks confidential communications and/or information protected by the attorney-client privilege and work product doctrine. Moreover, Petitioner objects to the document request to the extent that Registrant seeks information where the burden of deriving or ascertaining the answers thereto is substantially the same for Petitioner as for Registrant. Subject to and in accordance with these objections and the General Objections set forth above and incorporated by reference as though fully set forth herein, Petitioner responds as follows: Petitioner will produce non-privileged documents responsive to this request, if any exist, subject to an appropriate protective order once one is in place, if applicable.

**REQUEST NO. 39:**

All documents and things that relate to Petitioner's first awareness of Registrant.

**RESPONSE TO REQUEST FOR DOCUMENTS NO. 39:**

Petitioner objects to this document request on the ground that it seeks documents that are not relevant to a claim or defense of any party in this proceeding, and it is not reasonably calculated to lead to the discovery of admissible evidence. Petitioner objects to this request on the ground that it is overbroad, oppressive, and unduly burdensome. Petitioner also objects to this request to the extent that it seeks confidential communications and/or information protected by the attorney-client privilege and work product doctrine. Moreover, Petitioner objects to the document request to the extent that Registrant seeks information where the burden of deriving or ascertaining the answers thereto is substantially the same for Petitioner as for Registrant. Subject to and in accordance with these objections and the General Objections set forth above and incorporated by reference as though fully set forth herein, Petitioner responds as follows: Petitioner will produce non-privileged documents responsive to this request, if any exist, subject to an appropriate protective order once one is in place, if applicable.

**REQUEST NO. 40:**

All documents which refer or relate to any communications with Registrant.

**RESPONSE TO REQUEST FOR DOCUMENTS NO. 40:**

Petitioner objects to this document request on the ground that it seeks documents that are not relevant to a claim or defense of any party in this proceeding, and it is not reasonably calculated to lead to the discovery of admissible evidence. Petitioner objects to this request on the ground that it is overbroad, oppressive, and unduly burdensome. Petitioner also objects to this request to the extent that it seeks confidential communications and/or information protected by the attorney-client privilege and work product doctrine. Moreover, Petitioner objects to the document request to the extent that Registrant seeks information where the burden of deriving or ascertaining the answers thereto is substantially the same for Petitioner as for Registrant. Petitioner objects to this request because the phrase "any communications with Registrant" is ambiguous and unintelligible. Subject to and in accordance with this objection

and the General Objections set forth above and incorporated by reference as though fully set forth herein, Petitioner responds as follows: Petitioner interprets this request to mean communications made by Petitioner to Registrant, and will produce non-privileged documents responsive to this request, if any exist, subject to an appropriate protective order once one is in place, if applicable.

**REQUEST NO. 41:**

Any documents which refer or relate to Petitioner's awareness of Registrant or of the marks in use, registered or pending by Registrant.

**RESPONSE TO REQUEST FOR DOCUMENTS NO. 41:**

Petitioner's General Objections set forth above are incorporated by reference as though fully set forth herein. Petitioner objects to this document request on the ground that it seeks documents that are not relevant to a claim or defense of any party in this proceeding, and it is not reasonably calculated to lead to the discovery of admissible evidence. Petitioner further objects on the grounds that this request is unreasonably cumulative and duplicative as it seeks documents previously requested in Request Nos. 38, 39, and 40. Petitioner objects to this request on the ground that it is overbroad, oppressive, and unduly burdensome. Petitioner also objects to this request to the extent that it seeks confidential communications and/or information protected by the attorney-client privilege and work product doctrine. Petitioner objects to this request because the phrase "which refer or relate to Petitioner's awareness of Registrant or of the marks in use, registered or pending by Registrant" is ambiguous and unintelligible.

**REQUEST NO. 42:**

All documents and things reflecting any confusion between Petitioner's goods and services and Registrant's goods and services.

**RESPONSE TO REQUEST FOR DOCUMENTS NO. 42:**

Petitioner's General Objections set forth above are incorporated by reference as though fully set forth herein. Petitioner objects to this document request on the ground that it seeks documents that are not relevant to a claim or defense of any party in this proceeding, and it is not reasonably calculated to lead to the discovery of admissible evidence. Petitioner further objects to this request on the ground that it is overbroad, oppressive, and unduly burdensome. Petitioner further objects on the grounds that this request is unreasonably cumulative and duplicative as it seeks documents previously requested in Request No. 24 and 33.

**REQUEST NO. 43:**

All documents and things relating to any communications where the communicator believed that Petitioner or Petitioner's goods or services were in some way connected with Registrant or Registrant's goods.

**RESPONSE TO REQUEST FOR DOCUMENTS NO. 43:**

Petitioner objects to this document request on the ground that it seeks documents that are not relevant to a claim or defense of any party in this proceeding, and it is not reasonably calculated to lead to the discovery of admissible evidence. Petitioner further objects to this request on the ground that it is overbroad, oppressive, and unduly burdensome. Petitioner further objects on the grounds that this request is unreasonably cumulative and duplicative as it seeks documents previously requested in Request No. 24, 33, and 42. Subject to and in accordance with these objections and the General Objections set forth above and incorporated by reference as though fully set forth herein, Petitioner responds as follows: Petitioner will produce non-privileged documents responsive to this request, if any exist, subject to an appropriate protective order once one is in place, if applicable. Petitioner is not presently aware of any such documents.

**REQUEST NO. 44:**

All documents and things that relate to any conflict between the adoption or use, or registration of Petitioner's mark and the marks, terms or designations of any other persons or entities.

**RESPONSE TO REQUEST FOR DOCUMENTS NO. 44:**

Petitioner objects to this request because the phrase "to any conflict" is ambiguous and unintelligible. Petitioner objects to this document request on the ground that it seeks documents that are not relevant to a claim or defense of any party in this proceeding, and it is not reasonably calculated to lead to the discovery of admissible evidence. Petitioner further objects to this request on the ground that it is overbroad, oppressive, and unduly burdensome. Subject to and in accordance with these objections and the General Objections set forth above and incorporated by reference as though fully set forth herein, Petitioner responds as follows: Petitioner will produce non-privileged documents responsive to this request, if any exist, subject to an appropriate protective order once one is in place, if applicable. Petitioner is not presently aware of any such documents.

**REQUEST NO. 45:**

All documents and things referring or relating to any litigation, opposition, cancellation, or other dispute involving Petitioner's mark.

**RESPONSE TO REQUEST FOR DOCUMENTS NO. 45:**

Petitioner objects to this document request on the ground that it seeks documents that are not relevant to a claim or defense of any party in this proceeding, and it is not reasonably calculated to lead to the discovery of admissible evidence. Moreover, Petitioner objects to the document request to the extent that Registrant seeks information where the burden of deriving or ascertaining the answers thereto is substantially the same for Petitioner as for Registrant. Petitioner objects to this request on the ground that it is overbroad, oppressive, and unduly burdensome. Petitioner also objects to this request to the extent that it seeks confidential

communications and/or information protected by the attorney-client privilege and work product doctrine. Subject to and in accordance with these objections and the General Objections set forth above and incorporated by reference as though fully set forth herein, Petitioner responds as follows: Petitioner will produce non-privileged documents responsive to this request, if any exist, subject to an appropriate protective order once one is in place, if applicable. Petitioner is not presently aware of any such documents.

**REQUEST NO. 46:**

All documents and things that refer or relate to any conflicts or potential conflicts between Petitioner's mark and any other marks, including but not limited to any trademark searches that were performed in connection with the conflict or potential conflict.

**RESPONSE TO REQUEST FOR DOCUMENTS NO. 46:**

Petitioner objects to this request because the phrase "to any conflict" is ambiguous and unintelligible. Petitioner objects to this document request on the ground that it seeks documents that are not relevant to a claim or defense of any party in this proceeding, and it is not reasonably calculated to lead to the discovery of admissible evidence. Petitioner further objects to this request on the ground that it is overbroad, oppressive, and unduly burdensome. Petitioner also objects to this request to the extent that it seeks confidential communications and/or information protected by the attorney-client privilege and work product doctrine. Petitioner further objects on the grounds that this request is unreasonably cumulative and duplicative as it seeks documents previously requested in Request No. 44. Subject to and in accordance with these objections and the General Objections set forth above and incorporated by reference as though fully set forth herein, Petitioner responds as follows: Petitioner will produce non-privileged documents responsive to this request, if any exist, subject to an appropriate protective order once one is in place, if applicable. Petitioner is not presently aware of any such documents.

**REQUEST NO. 47:**

All documents and things that relate to Petitioner's advertising expenditures in the U.S. for goods or services in connection with Petitioner's mark, for each year.

**RESPONSE TO REQUEST FOR DOCUMENTS NO. 47:**

Petitioner's General Objections set forth above are incorporated by reference as though fully set forth herein. Petitioner objects to this document request on the ground that it seeks documents that are not relevant to a claim or defense of any party in this proceeding, and it is not reasonably calculated to lead to the discovery of admissible evidence. Petitioner objects to this request to the extent that it calls for the production of confidential business information, trade secrets, or commercially sensitive information of Petitioner. Petitioner further objects to this request on the ground that it is overbroad, oppressive, and unduly burdensome.

**REQUEST NO. 48:**

All documents and things that relate to articles or magazines or publications distributed by Petitioner or Petitioner's agents referring or relating to Petitioner's mark or which use or include the words, terms or designations asserted by Petitioner in these proceedings.

**RESPONSE TO REQUEST FOR DOCUMENTS NO. 48:**

Petitioner objects to this document request on the ground that it seeks documents that are not relevant to a claim or defense of any party in this proceeding, and it is not reasonably calculated to lead to the discovery of admissible evidence. Petitioner further objects to this request on the ground that it is overbroad, oppressive, and unduly burdensome. Subject to and in accordance with these objections and the General Objections set forth above and incorporated by reference as though fully set forth herein, Petitioner responds as follows: Petitioner will produce non-privileged documents responsive to this request, if any exist, subject to an appropriate protective order once one is in place, if applicable. Petitioner is not presently aware of any such documents.



**REQUEST NO. 49:**

All documents and things upon which Petitioner intends to rely or place in evidence during the testimony periods of this proceeding.

**RESPONSE TO REQUEST FOR DOCUMENTS NO. 49:**

Petitioner objects to the document request to the extent that Registrant seeks information where the burden of deriving or ascertaining the answers thereto is substantially the same for Petitioner as for Registrant. Subject to and in accordance with this objection and the General Objections set forth above and incorporated by reference as though fully set forth herein, Petitioner responds as follows: Petitioner will produce non-privileged documents responsive to this request, if any exist, subject to an appropriate protective order once one is in place, if applicable.

**REQUEST NO. 50:**

All correspondence between Petitioner and any third-party concerning or mentioning Registrant.

**RESPONSE TO REQUEST FOR DOCUMENTS NO. 50:**

Petitioner's General Objections set forth above are incorporated by reference as though fully set forth herein. Petitioner also objects to this document request on the ground that it seeks documents that are not relevant to a claim or defense of any party in this proceeding, and it is not reasonably calculated to lead to the discovery of admissible evidence. Petitioner further objects to this request on the ground that it is overbroad, oppressive, and unduly burdensome.

**REQUEST NO. 51:**

All correspondence between Petitioner and any third-party concerning Registrant's mark.

**RESPONSE TO REQUEST FOR DOCUMENTS NO. 51:**

Petitioner's General Objections set forth above are incorporated by reference as though fully set forth herein. Petitioner also objects to this document request on the ground

that it seeks documents that are not relevant to a claim or defense of any party in this proceeding, and it is not reasonably calculated to lead to the discovery of admissible evidence. Petitioner further objects to this request on the ground that it is overbroad, oppressive, and unduly burdensome. Petitioner further objects on the grounds that this request is unreasonably cumulative and duplicative as it seeks documents previously requested in Request No. 50.

**REQUEST NO. 52:**

All documents that relate to contemplated future use of any of Petitioner's mark by Petitioner, on behalf of Petitioner, or to or for the benefit of Petitioner.

**RESPONSE TO REQUEST FOR DOCUMENTS NO. 52:**

Petitioner's General Objections set forth above are incorporated by reference as though fully set forth herein. Petitioner objects to this document request on the ground that it seeks documents that are not relevant to a claim or defense of any party in this proceeding, and it is not reasonably calculated to lead to the discovery of admissible evidence. Petitioner objects to this request to the extent that it calls for the production of confidential business information, trade secrets, or commercially sensitive information of Petitioner. Petitioner also objects to this request to the extent that it seeks confidential communications and/or information protected by the attorney-client privilege and work product doctrine. Petitioner further objects to this request on the ground that it is overbroad, oppressive, and unduly burdensome. Petitioner further objects on the grounds that this request is unreasonably cumulative and duplicative as it seeks documents previously requested in Request Nos. 1, 14 and 16.

**REQUEST NO. 53:**

All documents that relate to the Petitioner's decision to drop "salad dressings" from its identification of goods under Petitioner's mark.

**RESPONSE TO REQUEST FOR DOCUMENTS NO. 53:**

Petitioner objects to this document request on the ground that it seeks documents that are not relevant to a claim or defense of any party in this proceeding, and it is not reasonably

calculated to lead to the discovery of admissible evidence. Petitioner objects to this request to the extent that it calls for the production of confidential business information, trade secrets, or commercially sensitive information of Petitioner. Petitioner also objects to this request to the extent that it seeks confidential communications and/or information protected by the attorney-client privilege and work product doctrine. Petitioner further objects to this request on the ground that it is overbroad, oppressive, and unduly burdensome. Subject to and in accordance with the General Objections set forth above and incorporated by reference as though fully set forth herein, Petitioner responds as follows: Petitioner will produce non-privileged documents responsive to this request, if any exist, subject to an appropriate protective order once one is in place, if applicable.

**REQUEST NO. 54:**

All documents that discuss or evidence market research, business plans, or the like by Petitioner or on behalf of Petitioner in connection with Petitioner's mark, or any goods or services in connection with Petitioner's mark.

**RESPONSE TO REQUEST FOR DOCUMENTS NO. 54:**

Petitioner's General Objections set forth above are incorporated by reference as though fully set forth herein. Petitioner objects to this document request on the ground that it seeks documents that are not relevant to a claim or defense of any party in this proceeding, and it is not reasonably calculated to lead to the discovery of admissible evidence. Petitioner objects to this request to the extent that it calls for the production of confidential business information, trade secrets, or commercially sensitive information of Petitioner. Petitioner further objects to this request on the ground that it is overbroad, oppressive, and unduly burdensome.

**REQUEST NO. 55:**

All reports, memoranda, correspondence or other documents that refer or relate to the retention of experts for use by Petitioner in connection with this Cancellation Action.

**RESPONSE TO REQUEST FOR DOCUMENTS NO. 55:**

Petitioner objects to this request on the ground that it is overbroad, oppressive, and unduly burdensome. Petitioner also objects to this request to the extent that it seeks confidential communications and/or information protected by the attorney-client privilege and work product doctrine. Subject to and in accordance with these objections and the General Objections set forth above and incorporated by reference as though fully set forth herein, Petitioner responds as follows: Petitioner will produce non-privileged documents sufficient to identify Petitioner's experts that may testify in this Cancellation proceeding, if any exist, subject to an appropriate protective order once one is in place, if applicable.

**REQUEST NO. 56:**

All reports, memoranda, correspondence or other documents that refer or relate to the opinion of any experts consulted or retained by Petitioner, or by any person or persons acting for or on its behalf, in connection with this Cancellation Action.

**RESPONSE TO REQUEST FOR DOCUMENTS NO. 56:**

Petitioner objects to this request on the ground that it is overbroad, oppressive, and unduly burdensome. Petitioner also objects to this request to the extent that it seeks confidential communications and/or information protected by the attorney-client privilege and work product doctrine. Subject to and in accordance with these objections and the General Objections set forth above and incorporated by reference as though fully set forth herein, Petitioner responds as follows: Petitioner will produce non-privileged documents responsive to this request, if any exist, subject to an appropriate protective order once one is in place, if applicable. Petitioner is not presently aware of any such documents.

**REQUEST NO. 57:**

[Registrant did not propound a Request No. 57]

**RESPONSE TO REQUEST FOR DOCUMENTS NO. 57:**

Not applicable.

**REQUEST NO. 58:**

All documents not previously produced, but identified in response to REGISTRANT'S FIRST SET OF INTERROGATORIES TO PETITIONER or referred to for purposes of preparing a response to those interrogatories.

**RESPONSE TO REQUEST FOR DOCUMENTS NO. 58:**

Petitioner's General Objections set forth above are incorporated by reference as though fully set forth herein. Applicant further objects to the document request on the ground that Applicant has submitted a general objection to Opposer's First Set of Interrogatories on the grounds that the number of interrogatories served, including subparts, exceeds the limit specified in 37 C.F.R. § 2.120(d)(1). Opposer will not produce any documents in response to this request. *See* TBMP 405.03(e).

**REQUEST NO. 59:**

All documents produced by Petitioner in any legal proceedings or Trademark Office proceedings where Petitioner sought to enforce rights in any of the Petitioner's mark.

**RESPONSE TO REQUEST FOR DOCUMENTS NO. 59:**

Petitioner's General Objections set forth above are incorporated by reference as though fully set forth herein. Petitioner also objects to this document request on the ground that it seeks documents that are not relevant to a claim or defense of any party in this proceeding, and it is not reasonably calculated to lead to the discovery of admissible evidence. Petitioner further objects to this request on the ground that it is overbroad, oppressive, and unduly burdensome. Petitioner also objects to this request to the extent that it seeks confidential communications and/or information protected by the attorney-client privilege and work product doctrine. Petitioner further objects on the grounds that this request is unreasonably cumulative and duplicative as it seeks documents previously requested in Request Nos. 45.

**REQUEST NO. 60:**

All documents and things referred to, used in preparation of, or used to obtain information for the responses to any of REGISTRANT'S FIRST SET OF INTERROGATORIES TO PETITIONER.

**RESPONSE TO REQUEST FOR DOCUMENTS NO. 60:**

Petitioner's General Objections set forth above are incorporated by reference as though fully set forth herein. Applicant further objects to the document request on the ground that Applicant has submitted a general objection to Opposer's First Set of Interrogatories on the grounds that the number of interrogatories served, including subparts, exceeds the limit specified in 37 C.F.R. § 2.120(d)(1). Opposer will not produce any documents in response to this request. *See* TBMP 405.03(e).

**REQUEST NO. 61:**

All documents and things which support, refer or relate to the allegations of the Petitioner in its Cancellation Petition filed against the Registrant in these proceedings.

**RESPONSE TO REQUEST FOR DOCUMENTS NO. 61:**

Petitioner's General Objections set forth above are incorporated by reference as though fully set forth herein. Petitioner objects to this request because the phrase "refer or relate to the allegations of the Petitioner" is ambiguous and unintelligible. Petitioner objects to this request on the ground that it is overbroad, oppressive, and unduly burdensome. Petitioner also objects to this request to the extent that it seeks confidential communications and/or information protected by the attorney-client privilege and work product doctrine. Petitioner further objects to the document request to the extent that Registrant seeks information where the burden of deriving or ascertaining the answers thereto is substantially the same for Petitioner as for Registrant.

**REQUEST NO. 62:**

Documents showing representative sales in the United States of America or in foreign commerce with the United States of America on a continuous basis for each of the Petitioner's products or goods identified within Petitioner's registrations asserted by the Petitioner in these proceedings.

**RESPONSE TO REQUEST FOR DOCUMENTS NO. 62:**

Petitioner's General Objections set forth above are incorporated by reference as though fully set forth herein. Petitioner also objects to this document request on the ground that it seeks documents that are not relevant to a claim or defense of any party in this proceeding, and it is not reasonably calculated to lead to the discovery of admissible evidence. Petitioner further objects on the grounds that this request is unreasonably cumulative and duplicative as it seeks documents previously requested in Request No. 30. Petitioner further objects to this request on the ground that it is overbroad, oppressive, and unduly burdensome.

**REQUEST NO. 63:**

Documents identifying geographic regions where the Petitioner's products are available in the United States of America.

**RESPONSE TO REQUEST FOR DOCUMENTS NO. 63:**

Petitioner's General Objections set forth above are incorporated by reference as though fully set forth herein. Petitioner also objects to this document request on the ground that it seeks documents that are not relevant to a claim or defense of any party in this proceeding, and it is not reasonably calculated to lead to the discovery of admissible evidence. Petitioner further objects on the grounds that this request is unreasonably cumulative and duplicative as it seeks documents previously requested in Request No. 26. Petitioner further objects to this request on the ground that it is overbroad, oppressive, and unduly burdensome.

**REQUEST NO. 64:**

All documents sufficient to identify the stores or accounts selling the Petitioner's products in the United States of America.

**RESPONSE TO REQUEST FOR DOCUMENTS NO. 64:**

Petitioner's General Objections set forth above are incorporated by reference as though fully set forth herein. Petitioner also objects to this document request on the ground that it seeks documents that are not relevant to a claim or defense of any party in this proceeding, and it is not reasonably calculated to lead to the discovery of admissible evidence. Petitioner further objects on the grounds that this request is unreasonably cumulative and duplicative as it seeks documents previously requested in Request No. 26. Petitioner further objects to this request on the ground that it is overbroad, oppressive, and unduly burdensome.

Perry IP Group ALC  
E. Lynn Perry  
4 Embarcadero Center, 39th Floor  
San Francisco, CA 94111  
Telephone: (415) 398-6300

Harvey Siskind LLP  
Raffi V. Zerounian  
Four Embarcadero Center, 39th Floor  
San Francisco, CA 94111  
Telephone: (415) 354-0100  
Facsimile: (415) 391-7124

Dated: May 15, 2008

---

Raffi V. Zerounian



**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing:

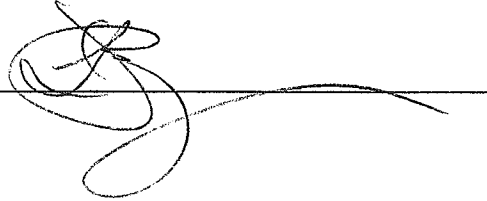
PETITIONER'S RESPONSES TO REGISTRANT'S FIRST SET OF REQUESTS  
FOR DOCUMENTS AND TANGIBLE THINGS

was served by delivering a true and correct copy of same via First Class Mail on the date  
indicated below, upon the following:

Frederick W. Meyers  
Amanda M. Roach  
Ladas & Parry LLP  
224 S. Michigan Avenue  
Suite 1600  
Chicago, IL 60604

May 16, 2008

Linda Penry



**EXHIBIT**

**C**

**Miari, Tanya**

---

**From:** Meyers, Fred  
**Sent:** Saturday, October 25, 2008 8:14 AM  
**To:** 'lperry@perryip.com'  
**Cc:** Luther, John; Miari, Tanya  
**Subject:** SALAD BAR

Dear Ms. Perry,

Please see the attached letter.

Regards.



Fred Meyers  
224 South Michigan Avenue  
Suite 1600  
Chicago, Illinois 60604  
Ph: 312-4271300 ext. 212  
Fax: 312-427-6663  
Email: FredM@ladas.net  
www.ladas.com

# LADAS & PARRY LLP

INTELLECTUAL PROPERTY LAW

Richard J. Streit ■ Frederick W. Meyers ■ John E. McKie ■ Burton S. Ehrlich ■ Brian W. Hameder ■ W. William Park  
Zareefa Burki Flener, MS ■ Loren K. Thompson, Ph.D\* ■ John P. Luther\*\* ■ Anthony E. Anderson  
Adam V. Litteken, MS\*\*\* ■ Richard J. Albright, MS ■ Eric D. Babych\*\*\*\* ■ Chloe A. Hecht  
Tanya H. Miari ■ Keith S. Van Duyne, MS\*\*\*\*\*

Of Counsel: Donald P. Reynolds ■ Valerie Neymeyer-Tynkov

\* Member Kansas Bar, member California Bar, not admitted in Illinois

\*\* Member Oklahoma Bar, member Washington Bar, not admitted in Illinois

\*\*\* Member Missouri Bar, not admitted in Illinois

\*\*\*\* Member Colorado Bar, not admitted in Illinois

\*\*\*\*\* Member District of Columbia Bar



---

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October 24, 2008

E. Lynn Perry  
Perry IP Group A.L.C.  
4 Embarcadero Center - 39th Floor  
San Francisco, CA 94111  
T 415-398-6300 (F 415-398-6306)

Re: SALAD BAR  
Registration No. 1758520 in the U.S.  
Cancellation Action No. 92047784

Dear Lynn:

We would like to speak to you at 2:00 p.m. central time on Tuesday, October 28, 2008 to discuss what we feel are deficiencies in your responses to our Interrogatories and Request for Production of Documents, and to attempt to resolve same. Kindly confirm your availability for this conference by return email.

As you know, this meeting is required prior to our filing of a motion to compel, should we not be able to reach a resolution on these issues.

Your cooperation in this matter is appreciated.

Sincerely,

Frederick W. Meyers  
Ladas & Parry LLP

cc: John P. Luther

# EXHIBIT

D

HARVEY M SISKIND LLP

October 28, 2008

Raffi V. Zerounian

VIA US MAIL and  
EMAIL to FredM@ladas.net

Frederick W. Meyers, Esq.  
Ladas & Parry LLP  
224 south Michigan Avenue, Suite 1600  
Chicago, IL 60604

Re: SALAD BAR  
Registration No. 1758520 in the U.S.  
Cancellation Action No. 92047162

Mr. Meyers:

This responds to your letter dated October 24, 2008, which you sent by email on Saturday, October 25, 2008, and which we did not receive until today (Monday) when our office opened. In your letter, you request that the parties hold a meet and confer conference on October 28, 2008, at 2:00 p.m. central time. For the reasons discussed below, as well as our availability, a conference on such short notice is premature.


By our reading of the Board's Order, the discovery period is open only for Petitioner. It therefore appears that Respondent's request here—essentially for further discovery—is untimely. Please let us know as soon as practicable what authority supports your above request at this juncture in the proceeding.

Your letter does not include any explanation of Respondent's concerns with Petitioner's discovery responses. Without such an explanation, any conference would be premature and unfruitful. Please send us a letter as soon as practicable that provides a detailed explanation of Respondent's concerns with Petitioner's discovery responses.

Frederick W. Meyers, Esq.  
October 28, 2008  
Page 2 of 2

We look forward to your response.

Sincerely,

A handwritten signature in dark ink, appearing to be 'Raffi V. Zerounian', with a long horizontal flourish extending to the right.

Raffi V. Zerounian

cc: E. Lynn Perry

RVZ:cl

# LADAS & PARRY LLP

INTELLECTUAL PROPERTY LAW

Richard J. Streit ■ Frederick W. Meyers ■ John E. McKie ■ Burton S. Ehrlich ■ Brian W. Hameder ■ W. William Park

Zareefa Burki Flener, MS ■ Loren K. Thompson, Ph.D\* ■ John P. Luther\*\* ■ Anthony E. Anderson

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Tanya H. Miari ■ Keith S. Van Duyne, MS\*\*\*\*\*

Of Counsel: Donald P. Reynolds ■ Valerie Neymeyer-Tynkov

\* Member Kansas Bar, member California Bar, not admitted in Illinois

\*\* Member Oklahoma Bar, member Washington Bar, not admitted in Illinois

\*\*\* Member Missouri Bar, not admitted in Illinois

\*\*\*\* Member Colorado Bar, not admitted in Illinois

\*\*\*\*\* Member District of Columbia Bar



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October 28, 2008

E. Lynn Perry  
Perry IP Group A.L.C.  
4 Embarcadero Center - 39th Floor  
San Francisco, CA 94111  
T 415-398-6300 (F 415-398-6306)

**VIA EMAIL**  
**& FIRST CLASS MAIL**

Re: SALAD BAR  
Registration No. 1758520 in the U.S.  
Cancellation Action No. 92047784

Dear Lynn:

We are in receipt of correspondence of today's date from Mr. Raffi Zerounian of your firm regarding the subject reference and issues. With respect to issues raised in Mr. Zerounian's letter, please be advised that a discovery conference is imperative for the following reasons.

- To date, Registrant has not received any responses to its already-served Requests for Production Nos. 1-64, many of which were promised and some wrongly outright refused, and
- Petitioner has refused – wrongly – to answer any of Registrant's interrogatories.

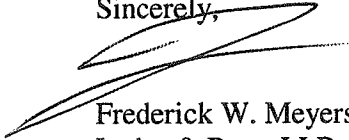
Therefore, our request for a discovery conference is not only proper, but necessary as the testimony period has not yet commenced.

As such, please contact us before 5:00 p.m central time on Wednesday October 29, 2008 with your availability for the remainder of this week so that we may schedule a discovery conference at a mutually convenient time. Should we receive no response by the set date, we shall proceed with our motion.



We look forward to hearing from you.

Sincerely,

A handwritten signature in black ink, appearing to be 'F. Meyers', written over the word 'Sincerely,'.

Frederick W. Meyers  
Ladas & Parry LLP

cc: John P. Luther  
Raffi V. Zerounian

LADAS & PARRY  
CHICAGO

HARVEY ■ SISKIND LLP

2008 NOV -3 PM 4:47

October 29, 2008

Raffi V. Zerounian

**VIA US MAIL and  
EMAIL to FredM@ladas.net**

Frederick W. Meyers, Esq.  
Ladas & Parry LLP  
224 south Michigan Avenue, Suite 1600  
Chicago, IL 60604

Re: SALAD BAR  
Registration No. 1758520 in the U.S.  
Cancellation Action No. 92047162

Mr. Meyers:

This responds to your letter dated October 28, 2008, which responded to our letter sent on the same day.

In our October 28<sup>th</sup> letter, we requested that you explain what authority supports your request for discovery at this juncture. Your letter in response did not include any such authority. We think it makes sense to have a conference with the Board's interlocutory attorney to resolve this dispute. Please let me know if you are amenable to scheduling such a conference.

In our October 28<sup>th</sup> letter, we also requested an explanation of Respondent's concerns with Petitioner's discovery responses so that any meet and confer conference we hold can be productive. Your only explanation is as follows: "To date, Registrant has not received any responses to its already-served Requests for Production Nos. 1-64, many of which were promised and some wrongly outright refused." In fact, we did serve responses and documents on you. For the sake of clarity, and so that we can prepare for the meet and confer conference, please specify which document request responses you believe are inadequate, and why. In addition, please specify which documents you believe your client is owed.

Frederick W. Meyers, Esq.

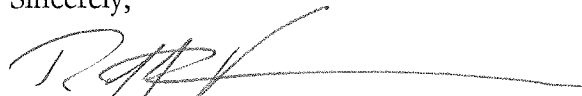
October 29, 2008

Page 2 of 2

Regarding Petitioner's general objection to Respondent's interrogatories, please send us your interrogatory count using the guidelines set forth in TBMP § 405.03(d). Using these guidelines, our interrogatory count was more than 75.

We do not understand your apparent rush to file a motion to compel, although we presume it is to postpone the follow-up discovery that Petitioner is entitled to take pursuant to the Board's Order. You notified us about your client's concerns with Petitioner's discovery responses for the first time on Monday morning, when we received your email requesting a meet and confer conference. Hardly thirty-six hours have since passed, and you are threatening to immediately file a motion to compel. Under 37 CFR § 2.120(e) and TBMP § 523.02, the parties must meet and confer in good faith prior to the filing of motion to compel. We are more than willing to do so. Two vague letters and an ultimatum do not meet the requirements of 37 CFR § 2.120(e) and TBMP § 523.02. Ironically, you threaten to file a motion to compel despite not having submitted any responses whatsoever to Petitioner's discovery requests, which were served over one year ago. We urge your client to remedy its own discovery failures before wasting both our client's and the Board's time and resources by filing your motion to compel, which is little more than a dilatory tactic.

Sincerely,



Raffi V. Zerounian

cc: E. Lynn Perry

RVZ:cl

# LADAS & PARRY LLP

INTELLECTUAL PROPERTY LAW

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Tanya H. Miari ■ Keith S. Van Duyne, MS\*\*\*\*\*

Of Counsel: Donald P. Reynolds ■ Valerie Neymeyer-Tynkov

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October 30, 2008

E. Lynn Perry  
Perry IP Group A.L.C.  
4 Embarcadero Center - 39th Floor  
San Francisco, CA 94111

**VIA EMAIL**  
**& FIRST CLASS MAIL**

Re: SALAD BAR  
Registration No. 1758520 in the U.S.  
Cancellation Action No. 92047784


Dear Lynn:

We are in receipt of correspondence dated October 29, 2008 from Mr. Raffi Zerounian of your firm regarding the subject reference and issues.

We have formally requested a telephonic discovery conference with you on multiple occasions, and to date have received no cooperation. We view this unwillingness to cooperate as a failure to meet the Board's requirement of good faith. Therefore, please once again let us know at your earliest convenience your availability for a telephone conference to discuss your failure to answer any of our interrogatories and your deficiencies in your responses to our document requests. We would like to schedule the conference to be held no later than one week from today.

Kindly reply to all attorneys involved with your response to this correspondence.

Sincerely,

  
Frederick W. Meyers  
Ladas & Parry LLP

cc: John P. Luther  
Raffi V. Zerounian

HARVEY ■ SISKIND LLP

November 3, 2008

Raffi V. Zerounian

**VIA US MAIL and  
EMAIL to FredM@ladas.net**

Frederick W. Meyers, Esq.  
Ladas & Parry LLP  
224 South Michigan Avenue, Suite 1600  
Chicago, IL 60604

Re: SALAD BAR  
Registration No. 1758520 in the U.S.  
Cancellation Action No. 92047162

Mr. Meyers:

This responds to your letter dated October 30, 2008.

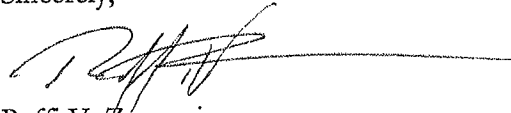
You have now twice ignored our request that you provide an explanation of the substance of your client's concerns with our client's discovery responses. You also have not stated why you believe that such an explanation is not appropriate. As we had mentioned, we believe that any meet and confer discussion will be more productive if we know something about the substance of your client's concerns with our client's discovery responses. We simply do not understand your unwillingness to commit your client's concerns to writing.

We also asked you twice for authority that supports your client's position that bringing a motion to compel at this juncture is proper in light of the Board's Order, given that it is tantamount to further discovery. You refused to provide any authority. In our letter of October 29<sup>th</sup>, we asked if you were willing to hold a conference with the Board's interlocutory attorney to discuss whether your client can bring a motion to compel. You also completely ignored this request, which we hoped could narrow the issues regarding this discovery dispute.

Frederick W. Meyers, Esq.  
November 3, 2008  
Page 2 of 2

Notwithstanding the above, we are willing to hold a meet and confer conference on Wednesday, November 5, 2008, between 10:00 a.m. and 5:00 p.m. Pacific time. At this time, we can also discuss your client's failure to provide any responses whatsoever to Petitioner's discovery requests. Please let me know if any of these times work for you.

Sincerely,

A handwritten signature in dark ink, appearing to read 'Raffi V. Zerounian', followed by a horizontal line extending to the right.

Raffi V. Zerounian

RVZ:lgp  
cc: E. Lynn Perry

# LADAS & PARRY LLP

INTELLECTUAL PROPERTY LAW

Richard J. Streit ■ Frederick W. Meyers ■ John E. McKie ■ Burton S. Ehrlich ■ Brian W. Hameder ■ W. William Park  
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\*\*\*\*\* Member District of Columbia Bar



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November 3, 2008

E. Lynn Perry  
Perry IP Group A.L.C.  
4 Embarcadero Center - 39th Floor  
San Francisco, CA 94111

**VIA EMAIL**  
**& FIRST CLASS MAIL**

Re: SALAD BAR  
Registration No. 1758520 in the U.S.  
Cancellation Action No. 92047784

Dear Lynn:

We are in receipt of correspondence of today's date from Mr. Raffi Zerounian of your firm regarding the subject reference and issues.

We confirm our availability for a discovery conference regarding Petitioner's discovery responses on November 5, 2008 at 5 p.m. Pacific time. By then you shall have received our discovery responses as requested in your letter of October 30, 2008 (our response to your Requests for Admission to be transmitted tomorrow, November 4, with the remainder of our responses to be transmitted on the 5<sup>th</sup>), at which point, you may schedule a conference as convenient to both parties as per the TTAB rules, should you have issues with our responses.

We look forward to speaking with you on November 5 at 3:00 p.m. CST.

Sincerely,

  
Frederick W. Meyers  
Ladas & Parry LLP

cc: John P. Luther  
Raffi V. Zerounian

# EXHIBIT

E



# LADAS & PARRY LLP

INTELLECTUAL PROPERTY LAW

Richard J. Streit ■ Frederick W. Meyers ■ John E. McKie ■ Burton S. Ehrlich ■ Brian W. Hameder ■ W. William Park  
Zareefa Burki Flener, MS ■ Loren K. Thompson, Ph.D\* ■ John P. Luther\*\* ■ Anthony E. Anderson  
Adam V. Litteken, MS\*\*\* ■ Richard J. Albright, MS ■ Eric D. Babych\*\*\*\* ■ Chloe A. Hecht  
Tanya H. Miari ■ Keith S. Van Duyne, MS\*\*\*\*\*

Of Counsel: Donald P. Reynolds ■ Valerie Neymeyer-Tynkov

\* Member Kansas Bar, member California Bar, not admitted in Illinois

\*\* Member Oklahoma Bar, member Washington Bar, not admitted in Illinois

\*\*\* Member Missouri Bar, not admitted in Illinois

\*\*\*\* Member Colorado Bar, not admitted in Illinois

\*\*\*\*\* Member District of Columbia Bar



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P 312.427.1300 ■ F 312.427.6663 ■ F 312.427.6668 ■ www.ladas.com

November 5, 2008

Raffi Zerounian  
Harvey Siskind  
4 Embarcadero Center - 39th Floor  
San Francisco, CA 94111

**VIA EMAIL**  
**& FIRST CLASS MAIL**

Re: SALAD BAR, Registration No. 1758520 in the U.S.  
Cancellation Action No. 92047784

Dear Raffi:

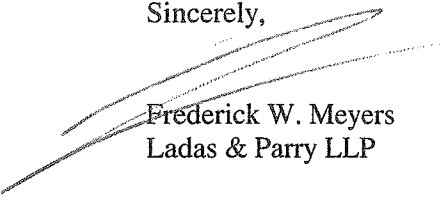
This letter serves to memorialize our telephonic discussion of today's date, wherein we agreed to postpone our scheduled discovery conference regarding what we feel are your deficiencies in answering our discovery requests for one week.

In furtherance of this matter, you agreed during our telephone conference to revert within two business days, or otherwise at your earliest convenience, with a settlement proposal and/or a time during which you will be available to discuss settlement, but no later than next Wednesday November 12.

Therefore, as it stands today, our discovery conference is postponed until tentatively one week from today, or Wednesday, November 12 at 3:00 p.m. CST. Should you not be available then, please notify us so that we may agree to a mutually convenient time.

We look forward to hearing from you at your earliest convenience with respect to settlement.

Sincerely,

  
Frederick W. Meyers  
Ladas & Parry LLP

cc: John P. Luther  
E. Lynn Perry

# EXHIBIT

F

**Miari, Tanya**

---

**From:** Meyers, Fred  
**Sent:** Wednesday, November 12, 2008 7:26 AM  
**To:** 'Raffi Zerounian'; Meyers, Fred  
**Cc:** Luther, John; Ehrlich, Burton; Miari, Tanya; Lynn Perry - PerryIP  
**Subject:** RE: SALAD BAR Cancellation No. 92047162

Your understanding is correct.

---

**From:** Raffi Zerounian [mailto:RZerounian@harveysiskind.com]  
**Sent:** Wednesday, November 12, 2008 12:18 AM  
**To:** Meyers, Fred  
**Cc:** Luther, John; Ehrlich, Burton; Miari, Tanya; Lynn Perry - PerryIP; Raffi Zerounian  
**Subject:** RE: SALAD BAR Cancellation No. 92047162

Mr. Meyers,

This confirms that the parties agreed to reschedule the discovery conference tentatively scheduled for Wednesday to Monday. Please let me know immediately if my understanding is incorrect.

Regards,

Raffi

Raffi V. Zerounian  
Harvey Siskind LLP  
Tel: 415.354.0100

---

This email has been scanned by the MessageLabs Email Security System.  
For more information please visit <http://www.messagelabs.com/email>

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11/19/2008

# EXHIBIT

# G

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
TRADEMARK TRIAL AND APPEAL BOARD**

U.S. Trademark Registration No.1,758,520

Registered Mark: SALAD BAR

Fresh Express Incorporated,

Petitioner,

vs.

Supreme Oil Company,

Registrant.

Cancellation No. 92047162

**REGISTRANT'S REVISED FIRST SET  
OF INTERROGATORIES TO  
PETITIONER (Nos. 1-29)**

**REGISTRANT'S REVISED FIRST SET OF INTERROGATORIES TO PETITIONER**

Pursuant to Rule 33 of the Federal Rules of Civil Procedure and Rule 2.120 of the Trademark Rules of Practice, Registrant Supreme Oil Company ("Registrant" or "Supreme"), by its attorneys, requests that Petitioner, Fresh Express Incorporated ("Petitioner" or "Fresh Express") answer the following interrogatories.

**INSTRUCTIONS AND DEFINITIONS**

A. These Interrogatories are to be regarded as continuing and Petitioner is requested to provide promptly, by way of supplementary answers thereto, such additional information as may hereafter be obtained by Petitioner or any Person or entity acting on Petitioner's behalf which will augment or otherwise modify any answers given to the following interrogatories.

B. Reference to the term "Registrant" refers to Supreme Oil Company, its employees and agents, and all other persons acting on its behalf or under its direction or control, including

its representatives or any person acting on its behalf, or the officers, directors, agents, employees, attorneys, sales representatives, or any person acting on behalf of any merged, consolidated or acquired predecessor, and the requested Interrogatories shall be answered in conformance with such construction.

C. Reference to the term "Petitioner," "You" or "Your" refers to Fresh Express Incorporated in the manner which will provide a full response by Petitioner, its employees and agents, and any and all other persons acting on its behalf or under its direction or control, including its representatives or any person acting on its behalf, or the officers, directors, agents, employees, attorneys, sales representatives, or any person acting on behalf of any merged, consolidated or acquired predecessor, and the requested Interrogatories shall be answered in conformance with such construction.

D. The term "Registrant's Mark" as used herein refers to the mark SALAD BAR shown in Registrant's Registration No. 1,758,520 registered March 16, 1993.

E. The term "Petitioner's Mark" as used herein refers to the mark SALAD BAR EXPRESS shown in Petitioner's Application No. 78/719,905 filed September 23, 2005.

F. In all Interrogatories requesting identification of documents and things, Petitioner should state whether it will make such document or thing available to Registrant for inspection and copying by stating "available"; if Petitioner is unwilling or unable to produce such document or thing for inspection and copying, Petitioner should so indicate by stating "not available" and giving all reasons therefor.

G. The term "document" as used herein utilizes the full meaning of that term as defined in the Federal Rules of Civil Procedure Rule 34 and includes all original writings and all non-identical copies and, without limitations, minutes, correspondence, electronic mail, voice

mail, video tapes, audio tapes, memoranda, agreements, licenses, sketches, diagrams, schematics, handwritten or stenographic notes, periodicals or other publications, purchase orders, sales invoices, bills of sales, advertising or sales literature, pamphlets, reports, records, studies, service manuals, operator manuals, instruction sheets, log sheets, data sheets, diaries, drawings, blueprints, photographs (prints as well as negatives), charts, papers, graphs, indexes, labels, tapes, computer printouts and other materials which are written, printed, typewritten, reproduced or recorded, and from which information can be obtained. Where originals or non-identical copies are not available, "document" also means copies of such originals or non-identical copies.

H. "Communication(s)" includes the disclosure, transfer or exchange of information by any means, written, verbal, electronic or otherwise.

I. The terms "specify," "identify" or "give the identification of" with respect to a document or thing is defined to mean a demand for a detailed description of each specific item identification of which is requested, whether or not it may be privileged or subject to an immunity and whether or not it is in Petitioner's possession, custody or control, by setting forth:

- (a) a description of its type and nature,
- (b) its date,
- (c) the present location and custodian for the original and all copies,
- (d) the names of the writer and recipients of the original and all copies and
- (e) the title or subject matter.

For any individual named as a writer or a recipient of such an item, the individual's full name and address should be stated, together with his present or last position and business affiliation; for any firm or corporation named, its full address should be stated, together with the name, address, and title of the official responsible for preparing or having custody of any such item. A copy of a

document may be provided in lieu of identification to the extent the information called for is clearly available from the face of the copy.

J. The term "identify" or "give the identification of" with respect to a person requires Petitioner to state:

- (a) in the case of a natural person, that persons (i) full name; (ii) last known home and business address; (iii) responsibilities with respect to the subject matter of the interrogatory and the periods of time that person had such responsibilities; and (iv) relevant knowledge or participation; or
- (b) in the case of corporations, partnerships, proprietorships, unincorporated associations and the like, the (i) full name, including any additional name it does business under; (ii) form and place of organization or incorporation; and (iii) principal place of business.

K. "Date" means the exact day, month and year, if ascertainable and, if not, Petitioner's best approximation thereof.

L. The use of male, female or neutral gender in these interrogatories incorporates all genders and should not be construed to limit the information requested in any way. The use of the singular form of any word includes the plural and vice-versa.

M. If any information is withheld from the answer due to an objection or privilege, state the nature of the information withheld and the basis for the objection or privilege.



## INTERROGATORIES

### INTERROGATORY NO. 1

Identify: (a) any other business entity(ies) which fully or partly owns or controls Petitioner; and (b) identify any other business entity(ies) which is fully or partly owned by Petitioner.

### INTERROGATORY NO. 2

Describe in detail Petitioner's business from its inception to date, including significant developments in the progress and expansion of its business.

### INTERROGATORY NO. 3

Identify all relevant facts and circumstances regarding the responsible individuals who have any responsibility with regard to the marketing, promotion, advertising or sale of Petitioner's goods which use the Petitioner's mark.

### INTERROGATORY NO. 4

Identify each affiliate of Petitioner, including, but not limited to, division, parent, subsidiary, controlling shareholder(s) and/or other related company.

### INTERROGATORY NO. 5

Identify all relevant facts and circumstances regarding each different facility that Petitioner uses in connection with the production and marketing, distribution and sale of products which use Petitioner's mark, and the role of each such facility therein.

INTERROGATORY NO. 6

Describe in detail each different meaning(s), including connotations and suggestions, of Petitioner's mark in the context of each of the goods with which that mark is used or has been proposed to be used.

INTERROGATORY NO. 7

Describe in detail all relevant facts and circumstances regarding the adoption, derivation and selection of Petitioner's mark and any documents referring or relating thereto.

INTERROGATORY NO. 8

Identify all relevant facts and circumstances regarding principal and distinguishing characteristics of and intended applications for each different product with which Petitioner uses Petitioner's mark, and any documents related thereto.

INTERROGATORY NO. 9

Identify each different product description, including without limitation product lists and feature descriptions, which Petitioner has used or intends to use for products under Petitioner's mark.

INTERROGATORY NO. 10

Identify the suggested retail price(s) in the United States for each different product which Petitioner has used in the United States with Petitioner's mark.

INTERROGATORY NO. 11.

If you contend that Registrant's mark has been abandoned, describe in detail all evidence that Registrant's mark has been abandoned, including documents that refer or relate thereto.

INTERROGATORY NO. 12

Identify all relevant facts and circumstances regarding each different trademark use or proposed use of Petitioner's mark, including of such mark on the goods, their containers, packaging, labels or tags applied thereto, or point of sale displays, and any documents, specimens and facsimiles relating to the foregoing.

INTERROGATORY NO. 13

Identify the individual contents within each product sold or proposed to be sold under Petitioner's mark, including but not limited to, any individually packaged containers found within Petitioner's product bearing Petitioner's mark.

INTERROGATORY NO. 14

With respect to the products sold using the Petitioner's mark, describe in detail all relevant facts and circumstances regarding each different channel of trade by which Petitioner's goods sold under the mark travel from the producer to the end-purchaser, and any documents related thereto.

INTERROGATORY NO. 15

Identify all relevant facts and circumstances regarding the Petitioner's resellers, and

provide a representative list of retail establishments in the U.S. that sell or will sell the products bearing the Petitioner's mark and any documents related thereto.

INTERROGATORY NO. 16

Identify each document relating to, describing or summarizing the demographics of Petitioner's average purchasers for each of the products sold under Petitioner's mark.

INTERROGATORY NO. 17

Identify the geographic extent of sales of the products under Petitioner's mark in the United States, including without limitation the inclusion of each affected State in the United States.

INTERROGATORY NO. 18

Identify the annual sales of the products under Petitioner's marks sold in the United States since their inception, including in dollar value and units of each such product sold.

INTERROGATORY NO. 19

Identify fully all relevant facts and circumstances regarding each different promotional, advertising, publicity or marketing piece Petitioner has ever published or distributed for products under Petitioner's mark and any documents referring or relating thereto.

INTERROGATORY NO. 20

Identify and describe all relevant facts and circumstances regarding all publications by unsolicited third party(ies) relating to Petitioner or Petitioner's mark.

INTERROGATORY NO. 21

Identify all relevant facts and circumstances regarding inter-party proceedings involving Petitioner's mark, including but not limited to court or administrative litigation, interference, conflicts, oppositions, or cancellation proceedings participated in by Petitioner, and any documents referring or relating thereto.

INTERROGATORY NO. 22

Identify and describe any objections or demands sent or received by Petitioner relating or referring to Petitioner's mark, including the person most knowledgeable of each, the outcome thereof, and any documents referring or relating thereto.

INTERROGATORY NO. 23

Describe in detail all relevant facts and circumstances regarding the circumstances surrounding Petitioner's first awareness of Registrant's mark, and identify any documents referring or relating thereto.

INTERROGATORY NO. 24

Describe in detail any overlapping geographic areas of concurrent use of Petitioner's

products under Petitioner's mark with Registrant's products under Registrant's mark, and any documents relating thereto.

INTERROGATORY NO. 25

Identify all relevant facts and circumstances surrounding any time period during which Petitioner or any other party having rights from Petitioner discontinued use of Petitioner's mark for any of the goods identified in Petitioner's application asserted in these proceedings, including without limitation the inclusive dates of the discontinuance for the goods discontinued, the reason(s) therefor, and the persons most knowledgeable about such use and non-use.

INTERROGATORY NO. 26

Identify each expert witness who may be used at "trial" by Applicant to present evidence under F.R.E. Rules 702, 703 or 705, including the providing of the information for an expert's written report under FRCP 26(a)(2).

INTERROGATORY NO. 27

Identify all relevant facts and circumstances regarding each transfer of rights, and all documents referring or relating thereto.

INTERROGATORY NO. 28

Describe in detail all relevant facts and circumstances regarding of each instance of actual/potential confusion of source, sponsorship or affiliation regarding Petitioner and

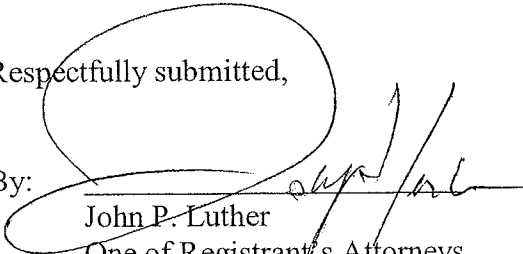
Registrant, regarding their respective marks or products under their respective marks, and identify all documents which refer or relate in any way to such confusion or mistake.

INTERROGATORY NO. 29

State whether any trademark searches, including surveys, investigations, research, or availability assessment and/or opinion, with respect to each and any of Petitioner's mark have been conducted and/or obtained, and identify all documents constituting, referring or relating to each.

Respectfully submitted,

By:

  
John P. Luther

One of Registrant's Attorneys

Frederick W. Meyers  
Burton S. Ehrlich  
John P. Luther  
Tanya H. Miari  
Ladas & Parry LLP  
224 South Michigan Avenue, Suite 1600  
Chicago, Illinois 60604  
(312) 427-1300

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing REGISTRANT'S REVISED FIRST SET OF INTERROGATORIES TO PETITIONER was served upon Petitioner's counsel on this 17 day of November, 2008 by email to [lperry@perryip.com](mailto:lperry@perryip.com) and by facsimile to (415) 398-6306, and also deposited with the U.S. Postal Service as first class mail, postage prepaid, addressed to counsel for Petitioner, as follows:

E. Lynn Perry  
Perry IP Group A.L.C.  
4 Embarcadero Center - 39th Floor  
San Francisco, CA 94111  
T 415-398-6300 (F 415-398-6306)  
[lperry@perryip.com](mailto:lperry@perryip.com)

By: \_\_\_\_\_

John P. Luther

One Of Registrant's Attorneys